Department of Justice Canada

Ministere de la Justice Canada

RESEARCH AND DEVELOPMENT DIRECTORATE

SOUS-DIRECTION DE LA RECHERCHE ET DU DÉVELOPPEMENT

POLICY, PROGRAMS AND RESEARCH SECTOR

SECTEUR DE LA POLITIQUE, DES PROGRAMMES ET DE LA RECHERCHE

WORKING DOCUMENT

REPORT ON THE TREATMENT OF SEXUAL ASSAULT CASES IN VANCOUVER, BRITISH COLUMBIA

Ekos Research Associates Inc.

September 1988a

WD1991 - 3a

This study was funded by the Research Section, Department of Justice Canada.

The views expressed herein are solely those of the author and do not necessarily represent the views of the Department.

92-02348/

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ACKNOWLEDGEMENTS

Over the course of the past 15 months, a great number of people have been integral to the conception and execution of this research project. While no written words can possibly convey the gratitude which I feel towards all who have contributed so generously of their time and expertise, I nevertheless would like to express my sincere gratitude to the following people:

Mr. Al Forbes, Mr. Herb Weitzel, Ms. Monique Cuomo and **Ms. Linda Light** for their important insights, assistance and advice as members of the Research Advisory Committee.

All of the people with whom we spoke during the course of the field work, and in particular, those people who contacted the "hotline" and related their painful episodes so that we could have a better sense of the experiences of the victim with criminal justice and related agencies. Without their participation, this study would not have been possible.

Ms. Patricia Begin, the project authority for this study, for her patience, advice and understanding throughout the course of this important project. And last, but by no means least, the members of the study team for their untiring persistence in completing this study.

Nick Falcon
Ottawa, Ontario
September 29, 1988

1.0 INTRODUCTION: BACKGROUND TO THE RESEARCH

On January 4, 1983, Bill C-127, "An Act to Amend the Criminal Code in Relation to Sexual Offences and Other Offences Against the Person", was proclaimed by Parliament. In an effort to focus on the assaultive aspects of sexual offences, Bill C-127 repealed the crimes of rape, attempted rape, sexual intercourse with the feeble-minded and indecent assault replacing them with three degrees of sexual assault. The sexual assault provisions of Bill C-127 made fundamental amendments to the Criminal Code with respect to the substantive, procedural and evidentiary aspects of Canada's rape and indecent assault laws.

Bill C-127 was passed after more than a decade of criticism and pressure by women's and other interest groups to redress problems perceived in the Criminal Code treatment of the crime of rape, and in the response of the criminal justice system to victims of rape. In the remainder of this chapter, we present the results of an overview of the relevant literature. We begin, in the following section, with a brief summary of the problems identified with the old legislation, common law rules and processing of reports. We then consider the substantive, evidentiary and procedural changes introduced by Bill C-127, and suggest the objectives underlying the amendments.

In the course of this chapter, we briefly describe the problems identified with the pre-1983 legislation, and the overall objectives and substantive, evidentiary and procedural changes introduced by Bill C-127. A critical review of recent research and theoretical literature is used to indicate a number of factors considered to have constrained reporting and convictions and to have contributed to the "secondary victimisation" of sexual assault victims under the pre-1983 legislation. The results of our critical review of the literature were used to develop the conceptual models that guided the data collection and analyses. These models formed our expectations as to the major factors of interest in the processing of reports of sexual assault and the linkages between these factors, Bill C-127 and observed outcomes.

1.1 Criticisms of the Rape Law

Dissatisfaction with the old rape (sections 143 and 145) and indecent assault (sections 149 and 156) laws revolved around three issues:

(i) the recognition that rape was one of the lowest reporting and conviction rates of crimes against persons;

(ii) the humiliation felt by victims as a result of their involvement with the criminal justice process; and

(iii) the attitudes towards women expressed in and reinforced by the legislation.

According to the Canadian Urban Victimization Survey,[1] 62 per cent of the sexual assault incidents that had occurred in 1981 had not been reported to the police.[2] An important reason for not reporting, cited by 44 per cent of the survey respondents who had failed to do so, was the fear that the police or courts held a negative attitude towards sexual assault complainants. According to the 1983 national population survey conducted for the Badgley Committee on Sexual Offenses Against Children and Youths, only 24 per cent of sexually assaulted females reported the assault to the police.[3] Male victims were even more reluctant to contact the authorities: 11 per cent of assaulted males indicated that they had done so.[4] While the figures from these various surveys may differ, it is clear that the majority of sexual assaults were not coming to the attention of the criminal justice system, and fear of the way in which victims were treated by the police and courts was an important factor discouraging reporting.

Some observers also considered that too few of the reported cases ended up in court. Clark and Lewis, based on their analysis of 116 reports of rape made to the Metropolitan Toronto police, argued that the "progress of a rape case through the

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[1] The Canadian Urban Victimization Survey was conducted in 1982 with 61,000 respondents in seven major Canadian urban centres. Solicitor General, Bulletin Four of the Canadian Urban Victimization Survey: Female Victims of Crime, 1985, pp. 2 and 4.

[2] The survey estimated that approximately 17,300 sexual assault incidents occurred between January and December 1981, of which about 90 per cent involved female victims.

[3] Committee on Sexual Offenses Against Children and Youth *Sexual Offenses Against Children* (Ottawa: Ministry of Supply and Services, 1984), p. 187.

[4] According to the findings from the Badgley Committee's research, as many as one of every two women and one of every three men in Canada have been subjected to unwanted sexual incidents during their lifetime.

criminal justice system reflects a highly selective process of elimination."[5] Only a fraction of reported rapes are considered as "founded" or based on fact, only a fraction of these cases culminate in an arrest and trial, and even fewer result in a conviction.

The 1983 *Canadian Crime Statistics*, for example, showed that 31 per cent of all rape reports were considered as unfounded or baseless. This was considerably higher than the four per cent of all assault complaints that were similarly classified.[6] Marilyn Stanley, in her review of Canadian studies concerned with the police processing of rape complaints, argued that police classified cases as unfounded if they were of the belief that a rape had not occurred or if they felt that the case would not be successfully prosecuted at court.[7] Toronto and Vancouver studies by Clark and Lewis concluded that the major factor in the decision to terminate the investigation or proceed with the case was the character and conduct of the complainant. Complainants who were intoxicated at the time of the assault, unemployed, between 30 and 40 years of age, either divorced, separated or living in a commonlaw relationship, under psychiatric care or were teenage runaways were less likely to have their complaints considered as founded. The police were also less inclined to pursue reports by complainants who were not hysterical at the time of report, waited too long to report the assault, or had voluntarily accompanied the assailant in his car or to his residence.[8]

The 1977 study by Clark and Lewis had also demonstrated that conviction rates for rape were substantially lower than general conviction rates for other criminal offences. They cited 1971 (police) Crime Statistics, which showed an 86 per cent overall conviction rate for criminal offences, whereas their review of the research for Metropolitan Toronto and Ontario uncovered conviction rates for rape of between 18 and 51 per cent.[9]

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[5] Lorenne Clark and Debra Lewis, Rape: The Price of Coercive Sexuality (Toronto: The Women's Press, 1977), p. 57.

[6] Statistics Canada, *Canadian Crime Statistics*, Catalogue 85-205 (Ottawa: Supply and Services, 1983).

[7] Marilyn G. Stanley, *The Experience of the Rape Victim with the Criminal Justice System Prior to Bill C-127*, Sexual Assault Legislation in Canada: An Evaluation, Report No. 1, (Ottawa: Supply and Services, 1987).

[8] Stanley, The Experience of the Rape Victim, pp. 38-39.

[9] Clark and Lewis, Rape: The Price of Coercive Sexuality, p. 56. The 51 per cent in the District of York comprised 32 per cent convicted of rape with 19 per cent acquitted of that crime but convicted of a lesser offence.

The difficulty in securing a conviction in a rape case was considered by legal experts to stem from a number of procedural and evidentiary rules, a primary one being the doctrine of recent complaint. This had developed as an exception to the general common law rule against the admission of previous out of court statements made by the witness. The exception developed because it was assumed that a truly virtuous woman who had been raped would raise a hue and cry at the first reasonable opportunity.[10] Evidence of the complaint could be admitted if the complaint was made at the first reasonable opportunity ("reasonable" was decided on a case by case basis) and was spontaneous (not induced). Evidence of this nature had no probative bearing upon any fact in issue (i.e., would not corroborate the complaint of rape) but was considered as relevant to the collateral issue of the victim's credibility. Thus, if the victim had been silent or if the complaint evidence was inadmissible (i.e., the complaint was not made soon enough, had been induced, or if a question arose as to the exact wording), the judge was required to instruct the jury that it could draw an adverse inference as to the victim's credibility.[11]

Despite the fact that there are many quite legitimate reasons why a victim might be reluctant to disclose the assault (e.g., embarrassment or fear of the publicity attendant upon disclosure)[12] and the fact that in most criminal cases the silence of the victim is irrelevant,[13] the lack of recent complaint was sometimes used to undermine the victim's credibility at trial.

Another factor impeding convictions was the need for corroboration of the victim's word, again an exception to common law rule.[14] Under section 142, if the only evidence implicating the accused was the testimony of the victim, the judge was required to caution the jury that it was not safe to find the accused guilty of rape in the absence of corroboration, but that they might do so if they believed her evidence was true

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[10] Gisella Ruebsaat, *The New Sexual Assault Offenses: Emerging Legal Issues*, Sexual Assault Legislation in Canada: An Evaluation, Report No. 2, (Ottawa: Supply and Services, 1987), p. 50.

[11] Stanley, The Experience of the Rape Victim, p. 42.

[12] P.K. McWilliams, Canadian Criminal Evidence, 2nd edition (Aurora: Canada Law Book, 1984), p. 367.

[13] Stanley, The Experience of the Rape Victim, p. 47.

[14] David Watt, The New Offenses Against the Person, (Toronto: Butterworths, 1984), p. 165.

beyond a reasonable doubt.[15] While section 142 was repealed in 1976, the warning of the jury continued as a rule of practice by judges to assist juries in determining the weight that they might give to the uncorroborated evidence of rape complainants. The presumption that women were untrustworthy and prone to fabricate charges of rape persisted in this rule of practice.

Convictions were also made more difficult by the treatment of evidence of the prior sexual history of the complainant. Prior to 1976, common law rules governed the admissibility of sexual history evidence considered as relevant to the issue of consent (an issue of fact) or to the credibility of the victim (a collateral issue)[16]. If the issue was consent (or the accused's belief in the consent of the complainant), the defence could question the complainant about her prior sexual history with the accused and her general reputation for chastity. The assumption was that sexually active women were more likely to have consented to intercourse than chaste women, and that if a prior sexual relationship had existed with the accused, the complainant was more likely to have consented to the incident in question[17]. The complainant was compelled to answer the questions, and contradictory evidence could be introduced by the defence.

If the credibility of the complainant was the issue in question, the defence could cross-examine the complainant about her prior sexual conduct with persons other than the accused. The apparent logic was that if the moral character of the complainant was suspect, then the veracity of her statement was also suspect.[18] As credibility was a collateral issue, the complainant was not compelled to answer the questions (and indeed the judge could intervene and exempt the witness from questioning); however, refusal to answer could affect a jury's perception of the victim's credibility.

These common law rules of evidence allowed prolonged explorations of the complainant's prior history and lifestyle, and as a result, victims were humiliated and effectively put on trial in lieu of the accused.[19] This exploration of the moral conduct and character of the victim also tended to prejudice juries against complainants, thereby making convictions more difficult. Boyle has argued that the effect of this belief that an

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[15] Stanley, The Experience of the Rape Victim, p. 49. Note as well that the corroboration rule held for indecent assault on a female but not indecent assault on a male.

[16] The Experience of the Rape Victim, p. 75.

[17] Watt, The New Offences Against the Person, p. 188.

[18] Stanley, The Experience of the Rape Victim, pp. 77 - 82, and Christine L.M. Boyle, Sexual Assault, (Toronto: The Carswell Company, 1984), p.15.

[19] P. McNamara, *Cross Examination of the Complainant in a Trial for Rape*, Criminal Law Journal, No. 5, 1981, p. 25.

unchaste woman was more likely to be untruthful was notorious for causing severe embarrassment to the victim by permitting questioning about her past sexual history. She further argues that one could legitimately question whether fear of this practice discouraged reporting.[20]

In 1976, the new section 142 restricted questions about the prior sexual history of the complainant with persons other than the accused except if notice had been given of the particulars sought and the judge, after an in camera hearing, had decided that excluding the evidence would prevent the making of a just determination of an issue of fact in the proceedings, including the credibility of the complainant.

This amendment elevated credibility, which had been a collateral issue, to the status of a material issue. Thus the complainant could no longer refuse to answer questions as to her prior sexual history with persons other than the accused, and the defence could introduce contradictory proof if she refused or denied in answer to the questions.[21] As Boyle has commented, "it seemed that an amendment touted as an improvement in the position of the complainant had the opposite effect."[22]

For victims, the trauma experienced as a result of their involvement in the criminal justice process stemmed from these evidentiary and procedural rules as well as from the practices and attitudes of practitioners that neglected their needs or concerns. The consequences of the original offence could be compounded via a "secondary victimisation" during the hospital examination, the police investigation and the trial process itself.

The legislative amendments were intended to address these issues. As well, other reforms were seen as necessary to fulfill the obligations of the criminal justice system to the victim, and to encourage reporting. The 1983 highlights report of the Canadian Federal-Provincial Task Force on Justice for Victims of Crime, for example, had called for specialised training of police officers and hospital staff to sensitise them to the needs of sexual assault victims, a review of training and procedures to ensure that reliable forensic and other evidence is collected to facilitate successful investigation and prosecutions, and the provision of assistance and services that meet the victim's practical and emotional needs for information and crisis counselling.

Another source of agitation for law reform came from feminist historical analyses of the rape laws. They argued that the tendency of the criminal justice system to degrade the victim stemmed from the male prejudices and fears that had shaped the legislation. Women were seen as chattel owned by men; for example, husbands were

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[20] Boyle, Sexual Assault, p.15.

[21] Watt, The New Offences Against the Person, p. 190.

[22] Boyle, Sexual Assault, p. 135.

not legally able to rape their wives. Lawgivers had sympathised with offenders rather than with the victims and took exceptional steps to protect men from wrongful accusations from emotional, unreliable and vengeful women.[23] The discriminating and patronising attitudes embedded in the legislation were considered to influence the behaviour and attitudes of practitioners, thereby contributing to low founding and conviction rates and the suspicion with which victims were often greeted by the responding agencies.

Pressure for reform therefore also focused on the way in which the legislation defined the crime of rape and the groups who were excluded from protection under the law. The act of rape, under statute law, had to involve penetration of the vagina by the penis, could only be committed by a man against a woman, must have taken place without the consent of the woman, or with her consent if this was extorted by threats, fear of bodily harm or false representations, and could only be committed outside the bounds of marriage.

Thus criticism was aimed at the exclusion of nonconsensual homosexual activities, the unequal protection and responsibilities under the law, of men and women, the lack of protection for wives from coercive sexual acts with their husbands, and the lack of protection from nonconsensual sexual activities other than intercourse (e.g., forcible anal or oral sex, penetration by a finger or object, etc.).

Argument was also made that rape was characterised as a crime of uncontrollable sexual passion rather than as an act of violence or abuse of power.[24] A re-conceptualisation of sexual offences was advocated, one that would define and process these offences as assaults. As a consequence of this, it was anticipated that the sexual history and conduct of the complainant would no longer be an issue at trial. The emphasis would shift from the behaviour of the complainant to the assaultive aspects of the crime, thereby reducing the potential for the secondary victimisation of the complainant.

Observers also argued that the sentences imposed for rape were inappropriate and that the sentence structure needed to be altered. The maximum sentence for rape was life imprisonment. According to Clark and Lewis, 1971 national data showed that sentences for rape convictions ranged from a suspended sentence to 14 years imprisonment. They concluded that the average sentence was four to five years, and

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[23] Boyle, Sexual Assault., pp. 4-6 and Clark and Lewis, Rape: The Price of Coercive Sexuality, p.11.

[24] Carol Smart and Barry Smart, Women, Sexuality and the Law (London: Routledge and Kegan Paul, 1978) and Steven Box, Power Crime and Mystification (London: Tavistock, 1983).

argued that this does not support the claim that rape is treated as a serious crime in Canada.[25]

Other observers criticised the lack of direction in the statute law as to how aggravating factors could be reflected in sentence length. The reluctance of jurors to convict rapists when the potential sentence did not reflect the severity of the alleged assault had also been noted.[26]

Thus, the pressures for legislative reform focused on how sexual assaults were defined, what groups were protected by law, the sentence structure, and the evidentiary and procedural rules governing sexual assault trials.

1.2 Sexual Assault Provisions of Bill C-127

According to the Law Reform Commission, the goals of legislative reform were the following: (i) to increase the protection for the dignity and inviolability of the person; and (ii) to alleviate the distress, humiliation and stigmatisation associated with the old law.[27]

Bill C-127, which became law on January 4, 1983, repealed the crimes of rape, attempted rape, sexual intercourse with the feeble-minded, and indecent assault (male and female), and replaced them with sexual assault. Proof of sexual intercourse was no longer required, thereby expanding coverage to include a broader range of assaults, including coercive anal or oral penetration. One could argue that by dropping the requirement for the crown to prove penetration, the legislation eased the trial experience of the complainant as the defence could no longer "pursue a line of questioning directed at raising a doubt as to whether penetration actually took place."[28]

These changes were intended to emphasise the assaultive rather than the sexual aspect of the crime. The legislation, however, did not provide a definition of "sexual". Some observers have suggested that this has the potential to reverse the intent of the change, if it focuses attention on whether the assault was sexual, and results in a more

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[25] Clark and Lewis, Rape: The Price of Coercive Sexuality, pp. 56-57.

[26] Canada, House of Commons, Justice and Legal Affairs, No. 78, April 22, 1982, p. 7.

[27] Law Reform Commission, Sexual Offenses, Working Paper No.22 (Ottawa: 1978), p. 18.

[28] Boyle, Sexual Assault, p.46.

narrow interpretation by the courts as to what constitutes a sexual assault.[29] If, for example, sexual was defined as requiring genital contact, this definition would limit the impact of the change.

New sections 246.1 to 246.3 describe three levels of sexual assault: (i) Level I sexual assault; (ii) Level II - sexual assault with a weapon, threats to a third party, bodily harm or party to the offence; and (iii) Level III - aggravated sexual assault. Maximum penalties range from six months to life imprisonment. This tripartite classification was intended to recognise the variety of aggravating factors associated with sexual assaults. The flexibility in charging was expected to encourage convictions (at least to the extent that the maximum sentence of life for rape had been considered to discourage convictions when the potential sentence did not reflect the severity of the alleged offence).

A second substantive change was to make the legislation neutral as to gender. Both sexes are now protected from coercive sexual assault committed by a man or a woman. Boyle, however, has argued that this "degenderization" is purely nominal in nature. She sees this as a legal reform that gives the appearance of equality rather than as a social reform that addresses the social problems and practices that result in "the unequal burden of victimisation that women bear in this context."[30] Coverage was also extended, under section 246.8, to spouses, whether living apart or not.

Certain procedural and evidentiary rules governing the conduct of a trial were also altered or abrogated. These changes were generally aimed at preventing the secondary victimisation of the complainant by the criminal justice system and increasing founding and conviction rates. Ultimately, they were expected to encourage reporting of sexual assaults.

The first evidentiary change (section 246.4) was the removal of the requirement for corroboration of a victim's testimony to obtain a conviction, and the explicit statement in the Bill that a judge cannot warn a jury that it is unsafe to convict the assailant without this corroboration. The corroboration rule had implied that a rape victim's testimony was less credible than that of any other crime victim acting as a witness. This assumption encouraged actors in the judicial process to question the victim's credibility (which can still be challenged on other issues), and often resulted in subjecting her to polygraph tests or a series of interviews to ensure the consistency of the facts of her story. Such practices and attitudes were regarded as contributing to the reluctance of many women to report. Implicit in the legislative changes was the recognition that, corroboration was, in most cases, not possible as there are rarely witnesses to sexual crimes. Submission extracted by the use of threats would not provide corroborating signs such as bruises arising from a struggle. The need for corroboration

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[29] See, for example, Ruebsaat, The New Sexual Assault Offences, p.13.

[30] Boyle, Sexual Assault, p. 41.

therefore reduced conviction rates. It was anticipated that the removal of the corroboration requirement would lead to higher levels of reporting and more convictions.

The second evidentiary change (section 246.5) was the abrogation of the rules regarding recent complaint. The assumption had been that a charge was likely to have been fabricated if a victim did not report the incident at the first "reasonable" opportunity, as a truly virtuous woman would complain as soon as possible. The change in the law was meant to reflect the reality that shame, fear of retaliation, or fear of the impact of disclosure on the victim's reputation or personal relationships, do not encourage prompt complaint. Dropping the recent complaint rules was therefore expected to increase founding and conviction rates.

A third reform (section 246.6) was the limitation on the admissibility of evidence regarding the previous sexual history of the complainant with persons other than the accused, with the exception of three specific circumstances. Notice must now be given of the intention to introduce such evidence, and the determination of its admissibility is done at an in camera hearing at which the complainant is not a compellable witness. The three exceptions allowable are:

- to rebut evidence of the complainant's sexual activity previously brought forward as evidence by the prosecution;
- to provide specific instances that tend to establish the identity of the person who had sexual contact with the complainant on the occasion set out in the charge;
- to provide evidence of sexual activity that took place on the same occasion as that which forms the subject of the charge where this evidence is related to the consent of the complainant as alleged by the accused.

Bill C-127 (section 246.7) also prohibited the introduction of evidence of sexual reputation for the purpose of challenging or supporting the credibility of the complainant. These latter changes were expected to reduce the potential for harassment of the victim during the trial proceedings and were a logical move accompanying the redefinition of rape as sexual assault. If the offence was to be treated primarily as an act of violence, then evidence regarding the sexual activity of the complainant would be irrelevant. The change could also be seen as helping to ensure that the scope of protection was not extended only to "certain women who had not infringed judicial and societal norms about what was appropriate behaviour and lifestyle."[31]

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[31] Boyle, Sexual Assault, p. 14.

Based on this review of the nature of the substantive, procedural and evidentiary changes made to the law in 1983, the overall objectives of these amendments could be defined as follows:

- to reduce or prevent the "secondary victimisation" of the complainant resulting from her (or his) involvement in the criminal justice system (in particular during the trial);
- to extend legal protection to a wider range of Canadians and to enhance their protection from a wider range of nonconsensual sexual offences;
- to encourage the reporting of sexual offences and increase their founding and conviction rates.

The extent to which the legal reforms have resulted in the achievement of these objectives (as well as any uninterested impacts) is discussed in the following chapters.

1.3 Organisation of the Report

In the following chapter, we briefly outline the underlying research issues for this study and briefly describe the methodology employed to complete it. In Chapters Three to Six, we present our findings with respect to the four central study goals, through a synthesis of the major lines of evidence available. The final chapter summarises the key findings, draws conclusions with respect to the intended and unintended impacts of Bill C-127, and suggests future directions for legislative reform, nonlegislative measures and further research.

2.0 RESEARCH ISSUES AND STUDY METHODOLOGY

As noted in the previous chapter, Bill C-127 became law on January 4, 1983. The new law deleted rape and indecent assault from the Criminal Code and replaced them with three degrees of sexual assault in an effort to focus on the assaultive rather than the sexual aspects of the crime. The three levels were sexual assault; sexual assault with a weapon, threats to a third party, or causing bodily harm; and aggravated sexual assault. Protection was extended to new groups (e.g., spouses, males), and evidentiary and procedural rules governing the conduct of a sexual assault trial were altered.

These changes were major and were expected to improve reporting and conviction rates, alter attitudes towards the nature of the crime, better sensitize those who administer the law to the needs of the complainant, and make the experience of participating in the criminal justice system a less harrowing and degrading experience for the victim.

In the past, some legislative reforms have produced negligible or even opposite effects to those intended. (It has been argued, for example, that section 142, enacted on April 26, 1976 to encourage more widespread reporting of rape, actually worked counter to this objective.)[1] As well, little is known in Canada about the effects of legislative changes generally in tackling the identified problems. Furthermore, the link between legal reform and justice system changes is not known, especially given the relative "youth" of legislative evaluation research as a field of study.

To remedy these gaps in knowledge relative to the areas touched by Bill C-127, the Department of Justice Canada commissioned a study to: review the implementation of the law; assess the intended (and unintended) impacts and effects of Bill C-127 on the processing and outcomes of sexual assault reports and on the experience of the victim; and determine whether the objectives of the legislative reforms were being met. In an effort to strengthen the overall design for the study, the Department decided to have this work undertaken simultaneously in six sites across Canada. Ekos Research Associates was hired to conduct this study in Vancouver, British Columbia.

2.1 Research Issues

To provide the kind of information required to meet departmental objectives, the study had four major research goals. The first was to describe the current response of the criminal justice system and related agencies to reports of sexual assault incidents.

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[1] See Boyle, Sexual Assault, p.135 and Stanley, The Experience of the Rape Victim.

Before we could evaluate whether the 1983 amendments had been successful in achieving their intended impacts and effects, or whether further changes were required, we needed to understand how the Vancouver criminal justice system (police and courts) and related agencies, such as the sexual assault centre and medical facilities, operate today in relation to sexual assault. We interpreted this very broadly to include (i) the characteristics of the incidents reported to these agencies; (ii) the process or sequence of steps by which a report of sexual assault is filtered through the criminal justice system and related agencies; (iii) the outcomes at each stage of the process; and (iv) the types of factors that influence case progression and outcomes.

The second study goal, and perhaps the most important and methodologically complex one was to determine the direction and extent of any changes in practices and outcomes since the introduction of Bill C-127, and to identify the factors that explained these changes or lack of changes. This involved three steps: (i) to document the nature and severity of any changes in processes and outcomes since 1983; (ii) to discern the extent to which the implementation of Bill C-127 is responsible for documented changes; and (iii) to isolate the factors that may enhance, retard or prevent the realization of the intended impacts of the legislative amendments.

While our primary focus was on the practices and outcomes that were expected to change as a result of Bill C-127, we attempted to remain sensitive to unexpected or unintended changes. The methodological complexity noted above arose from the difficulty associated with determining the relative effects of Bill C-127 and other possible explanatory or causal factors. In the following section, we describe the approach taken to identify the relative causal role played by the amendments.

The third major goal was to describe the victim's felt experience with the criminal justice system and related medical and rape crisis services (the victim's impressions of how well or how poorly s(he) was treated by the various agencies during the pretrial and trial periods). This was considered very important as many of the amendments were specifically aimed at making the victim's experience in court less harrowing and humiliating. Because we lack comparable preamendment data on how victims experienced the Vancouver criminal justice system, we will be unable to determine if the treatment of the victim has altered as a result of the amendments or any other factors. However, we can use expert opinion and existing research studies to suggest the impacts of the amendments in this important area.

The final research goal was to document what improvements were suggested by practitioners to better achieve the intentions underlying the 1983 legal reforms. Practitioners were defined as police officers, crown counsel, defence lawyers, sexual assault centre counsellors and emergency medical services staff at the Shaughnessy Hospital, which is designated as the regional centre for sexual assault cases. In personal and telephone interviews, practitioners were asked if the problems that the reforms were

designed to address still persist, if there were other outstanding problems, and the nature of any possible solutions.

2.2 Study Methodology

Because the research goals were complex, we were reluctant to rely on any single indicator or source of evidence as the basis for our findings and conclusions. We therefore used five different lines of evidence:

1. a review of police and crown files for sexual assaults reported in periods before and after the amendments;

2. a review of sexual assault centre files for pre and post-amendment periods;

3. interviews with practitioners in the criminal justice system and related agencies;

4. observation of sexual assault trials during much of 1987; and

5. interviews with sexual assault victims.

The objective and subjective data collected from these different sources were "triangulated" in order to address each of the research goals. In other words, the various lines of evidence were used as sources of cross-corroboration or validation for major findings. This enhances the credibility of study findings.

The major problem faced in this study was the need to distinguish the causal system that explained observed changes in the dependent variables of interest (primarily the various outcomes from reporting and court involvement). Of particular concern was the need to disentangle the effects of Bill C-127 from other explanatory factors, such as changes in public attitudes towards sexual autonomy and the stigma of being labelled as a victim of a sexual assault, or independent changes in the way in which organizations were equipped to deal with reports of sexual assault or their victims.

Our ability to empirically extricate the relative influence of these different causal factors was very limited. This was primarily because of the research design. For obvious reasons, it was not possible to have an experimental research design that would randomly assign sexual assault victims to pre and post-amendment legal definitions and evidentiary and procedural rules. Without an experimental design, it was difficult to control for, or rule out, possible competing explanations other than the amendments for any observed changes.

It was also partly due to the lack of quantitative data on certain potentially significant factors. Among these were the media treatment of sexual assault, public

education efforts, and public mores and attitudes and how these have changed over time. Without these types of data, it was difficult to statistically control for other explanatory factors.

In the absence of experimental controls, one can attempt to exert statistical controls. We have attempted to identify plausible competing explanations and to determine their likely causal impacts using statistical analyses of quantitative data (for example, to control for differences in the types of incidents being reported) as well as the qualitative findings from the key informant interviews were also a useful source of subjective data. These latter provided expert opinion from different perspectives as to the factors that may have accounted for observed outcomes, or masked or heightened the expected impacts of the 1983 reforms. The observation of sexual assault trials was useful as well in suggesting how the legislative amendments had been implemented. The synthesis of these lines of evidence, however, is a reasoned judgement rather than a definitive attribution of causality.

We also caution the reader that throughout this report some of the tables contain large numbers of missing cases. Where this occurs, the reader should be wary of interpreting trends or relationships because the missing cases may very well differ in a systematic fashion from the cases presented.

It is also important to note that the findings from each of the individual lines of evidence were reviewed by a research advisory committee composed of representatives from the Vancouver criminal justice system and related agencies. While this review process may have helped ensure that major errors in fact or interpretation have been avoided, responsibility for the synthesis and conclusions is ours alone.

In the rest of this section we describe the different data sources used, sampling strategies and the quality of the data collected. A more detailed discussion of the data collection methodologies and field work results is available from the five component reports listed in Appendix A.

2.2.1 Review of Police and Crown Files

The Vancouver police provided computer printouts listing the file numbers for all occurrence reports involving victims 18 years of age or older classified as section 246 (sexual assault) in 1984 and 1985, or as section 143 (rape), section 145 (attempted rape), section 149 (indecent assault on a female) and section 156 (indecent assault on a male) in 1981 and 1982. The 1981/82 and 1984/85 occurrence reports provided data for the preamendment and post-amendment periods, heretofore referred to as Time One and Time Two respectively.

As study resources precluded a census of all cases, we selected a sample of 197 cases for Time One and 218 cases for Time Two. The total numbers of cases (i.e.,

population) for the two periods were 528 and 408, respectively. Our large sample sizes provide narrow confidence intervals enabling or an excellent ability to infer from our study statistics to the wider study population.

As the occurrences were disproportionately distributed among the three levels of sexual assault, and between rape and indecent assault, we stratified our sample by the classification of the occurrence used to organize the computerized police database. We took a census of the more serious section 246 Levels II and III reports, and indecent assaults on males. For the other categories, section 246 Level I sexual assault, indecent assault on a female, rape, and attempted rape, we drew simple random samples using a random numbers table to select occurrence report numbers.

Two different versions of the data files were used in the analysis and presentation of the data. A weighted file[2] was produced for purposes of presenting descriptive statistics, in particular, making univariate generalizations about the study population. Weighting was necessary since certain classes of observations (e.g., Level I sexual assaults) were less likely to appear in our sample than they were in the population.[3] Since Level I offences are systematically different than Level II and Level III offences, an unweighted file would produce bias in estimating to the broader population of sexual assault reports for which the police completed occurrence forms in 1984/85.

For the purposes of inferential tests of statistical significance (e.g., chi square), an unweighted file was necessary. This is because weighting strategies artificially alter the number of cases and thus the variances of the variables are affected. Given that tests of statistical significance are based on variance, the tests would be invalid if conducted on the weighted data file. Thus, all tests of statistical significance, especially those relating to changes over time, are conducted on the unweighted data file.

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[2] The weighted file reflects the distribution of cases in the population. The sample cases were weighted in order to approximate as closely as possible the proportional representation in the population. The weighted file actually decreases the total number of cases included in our Time Two sample. The decreases affect the Level II and Level III cases while the number of Level I cases is slightly increased.

[3] In particular, the sampling strategy used for this project disproportionately increased the incidence of Level II and Level III cases in the sample. This occurred because we conducted census reviews of the police files included under these two classifications. It was felt that using simple random sampling techniques would jeopardize our ability to account for the differences represented by Level II and Level III cases due to their low incidence in the population. Thus, we stratified the sample by police classification of the offence, conducting census reviews of the more serious Level II and Level III sexual assaults, and a random sample (using a random numbers table) of the Level I cases. As previously noted, the overall sample was then weighted in order to restore the original balance between the various Criminal Code classifications.

The number of reports made in the two time periods, the number of files reviewed (i.e., the sample) and the number of weighted cases are displayed in Table 1.

Table 1 Sampling Distribution for the Police File Review

	Number of Reports	Sample Drawn	Weighted Cases
TIME ONE			
Rape/attempted rape	253	88	112
Indecent assault-female	265	100	117
Indecent assault-male	10	9	5
TOTAL	528	197	234
TIME TWO			
Level III-aggravated	13	13	6
Level II-weapon, party to, bodily harm	61	61	27
Level I	334	144	148
TOTAL	408	218	181

Crown briefs, kept by the crown Prosecutor's office, were also reviewed and pertinent data captured on specially designed forms by two field workers hired and trained by Ekos. Crown files pertaining to sexual assault, rape and indecent assault cases that were handled by the County and Provincial Courts in Vancouver in 1981/82 and 1984/85 were reviewed. Using the police occurrence report numbers and offender family names, we were able to track cases from initial report to final outcome. In total, we reviewed crown files for the 64 cases in which charges were laid.

The data in the police and crown files were transcribed by field workers hired and trained by Ekos, using data capture forms based on the occurrence report, criminal record and crown sheets and other standard reporting forms used by the Vancouver police. The completed forms were reviewed for completeness, accuracy and legibility by Ekos staff before being keypunched.

As the information was captured from the occurrence reports, criminal records, crown sheets and other standard reporting forms, we have little control over data

quality. Some files lacked certain pieces of information. As well, we cannot guarantee that all fields were completed in a consistent manner from report to report or year to year.

Careful training of the field staff, the assistance of the Vancouver police records staff in interpreting reports, and a careful analysis of the internal consistency of the data collected suggest that transcription errors (i.e., coding and data entry errors) are minimal. With the large sampling fractions used, we also believe that our ability to infer from sample statistics to the true parameters of the study populations to be excellent. We cannot, however, safely extrapolate from these sample statistics to the wider universe of all pre and post-amendment reports as pre-1981 or post-1985 reports may differ systematically from our study populations. Neither can we extrapolate to unreported sexual assaults.

2.2.2 Review of Women Against Violence Against Women (WAVAW) Files

We also reviewed a random sample of files maintained by WAVAW in Vancouver to record calls made by sexual assault victims. In the remainder of this subsection, we briefly describe the sampling strategy and data collection methodology. Briefly, 228 cases were randomly selected for the two time periods. Although, the total caseload for the two time periods is not known, based upon a review of available quarterly statistics regarding callers, we estimate that approximately 500 calls were received by WAVAW in 1982 and between 1200 and 1500 calls were received during 1984 and 1985. The sample consists of 110 Time One (1982) cases and 118 Time Two (1984/85) cases.

WAVAW staff pulled the files for the sample cases and filled out data capture forms supplied by us. The records from which data were collected were not always complete. For example, in a minimum number of the case files, no clear description of the type of assault was mentioned. We deleted these cases from the sample as we were not sure of the type of assault or even if they were sexual assaults.

The relatively small sample size makes it difficult to accurately "predict", or completely account for behaviour such as reporting to police, through statistical analysis. The purpose of this component of the study, however, was to identify differences in the types of cases reported to sexual assault centres and to the police in Vancouver. Although these factors preclude sweeping generalizations, the data does provide a rich source of qualitative information that would not have been readily available from any other sources.

2.2.3 Criminal Justice and Related Agencies' Key Informant Interviews

Detailed interviews were conducted with 31 key informants. The respondents were selected on the basis of experience with sexual assault complainants both before and after the 1983 amendments. Interviewees included:

- seven WAVAW workers;
- three doctors on the Shaughnessy Hospital's Sexual Assault Management Project Team;
- three Provincial and one County Court judges;
- nine crown attorneys;
- five defence lawyers; and
- four police officers on the Vancouver Police Sexual Offences Squad (including staff sergeant).

The interviews took on average two hours to complete. The interviews were conducted in person or over the telephone. A list of questions asked of the various groups of respondents is available in Appendix B of this report.

2.2.4 Court Monitoring

The information in this report regarding court observations was collected by specially trained field workers who observed court trials and noted their observations on an instrument designed for this purpose. A copy of the court observation instrument appears in Appendix B.

Briefly, we designed the instrument based on earlier instruments used in court monitoring studies, an analysis of the study goals and a critical review of the relevant literature. This draft instrument was reviewed by our legal expert (a Toronto-based lawyer who has done research on the topic of sexual assault and the legal issues emerging from the 1983 amendments) and revised accordingly. It was then compared to the court instruments developed for use in the other study sites and reviewed by the client.

Several field workers were trained to use the court observation instruments. The training covered the study background and issues, what could be expected at court, how each item was to be completed, what types of issues we were particularly interested in, and how to approach courtroom participants.

The quality of the training process, and a careful analysis of the completed instruments, suggests that the information is both reliable and valid. We observed seven of the fourteen possible County Court trials held during the study period.

2.2.5 Survey of Victims

The terms of reference for this study called for interviews to be conducted with victims identified from the trials observed during the study period. As previous studies have shown very low response rates for surveys of sexual assault victims, we needed to increase our pool of potential respondents. Given our experience conducting the site study in Hamilton, Ontario, it was decided that the most fruitful means for increasing the potential number of respondents was to establish a "victim hotline."

The "hotline" approach was decided upon at least partly because it is less intrusive and potentially less traumatic for victims as a call to the hotline to discuss their experience of the criminal justice system is at their initiative. The hotline was supervised by two trained crisis counsellors who work for WAVAW.

In total, we completed 16 interviews -- 11 over the hotline and five through a self-completion instrument. With such a small sample size, we cannot extrapolate from these findings to the wider population of sexual assault victims who have had experience with the Vancouver courts. There are few responses and significant response biases likely exist; in other words, nonrespondents may differ significantly from respondents. Nonetheless, the case studies that appear in this report (the actual case studies are included as Appendix C) provide a rich source of data regarding 16 different experiences with the criminal justice system and related agencies in Vancouver.

It is important to note that no comparable pre-1983 information exists on the felt experience of rape and indecent assault victims with respect to their participation in the Vancouver criminal justice system. It was assumed that contacting victims who had been assaulted five or six years ago would be extremely upsetting for those who wished only to forget the incident or who had acquired partners who knew nothing of the past assault. The addresses in the police or crown files for preamendment cases were also likely to be out of date, thus posing considerable tracking problems. The decision to exclude preamendment victims was explicit in our terms of reference.

3.0 CURRENT RESPONSE TO REPORTS OF SEXUAL ASSAULT INCIDENTS

In this chapter, we explore the current institutional response to reports of sexual assault based upon our review of 1984/85 police, crown and sexual assault centre files, findings of the key informant interviews and the findings from the court monitoring. We begin by describing the types of sexual assault incidents reported to the police subsequent to the amendments and the characteristics of complainants and offenders. In the second section, we focus on the question of underreporting of sexual assaults through an examination of the incidents described by callers to the sexual assault centre. In the third section, we consider the processing of sexual assault reports by the criminal justice system and other agencies, looking at the extent of involvement of the various agencies, and such criminal justice system outcomes as founding, charging, conviction and sentencing. Factors that are significantly associated with these decisions or outcomes are identified. The final section profiles the seven sexual assault trials held at District Court that we observed during 1987.

3.1 Profile of the Incidents Reported to the Police

In this first section we describe the reports of sexual assaults involving victims 18 years of age or older made to the Vancouver police along four major dimensions: the initial classification of the report by the police according to the various levels of sexual assault and the characteristics of the complainant, the alleged offender, and the incident. The reader should bear in mind that this profile does not describe the typical sexual assault victim or assailant as it is likely that the majority of sexual assaults are never reported to the police. Our profile is restricted to reported assaults. Secondly, we use the terms "complainant" and "offender" but not all complainants are victims, nor are all offenders found guilty of the allegations.

3.1.1 Initial Police Classification of Reports

The occurrence report computer file of the Vancouver police was used to provide the list of the occurrence report file numbers that were sampled. This file labelled occurrences according to the three levels of sexual assault. When we actually examined our sample of files, we found a few discrepancies between these computer labels and the more precise classification of reports according to those sections of the Criminal Code that the police considered to have been violated. We also encountered a small number of reports involving juveniles. These were deleted from the population estimates and sample. There were also a minority of cases that involved (possible) multiple charges.

In Table 2 we display the classification of offences reported according to the most serious sections of the Criminal Code. In other words, if the possible charge was section

246 Levels I and II, we have labelled the case as Level II. We have presented both the population estimates and the sample drawn.

Table 2 Comparison of Sample Cases with Population of Cases for Reported Sexual Assaults by Most Serious Charge

	Population	Percentage	Sample Drawn	Percentage
Police Classification				
Level III - aggravated	13	3.2	13	5.9
Level II - weapon, bodily harm, party to	61	14.9	61	28.0
Level I	334	81.9	144	66.1
TOTAL	408	100.0	218	100.0

Note: These figures include only those cases where victims were 18 years of age or older.

Source: Vancouver Police Occurrence Report Computer File

The vast majority (82 per cent) of the incidents were classified as Level I sexual assault. Only 13 cases or three per cent were classified as Level III aggravated sexual assault. The remainder (15 per cent) were classified as Level II sexual assault.

We drew a simple random sample of the police occurrence reports for cases involving Level I sexual assaults. This sample was drawn using a random numbers table. However, because of our concern that use of this technique would result in few if any of the cases involving Levels I and III sexual assault being selected, (because of low numbers of these cases) we decided to conduct a census of each of these classifications and use a weighting strategy, during the analysis phase, to restore the proper balance.

Two-thirds (66 per cent) of the sample includes cases involving Level I sexual assaults. Just over one-quarter (28 per cent) of the sample includes cases involving Level II sexual assaults (i.e., weapon, bodily harm or party to), while six per cent involve Level III aggravated sexual assaults.

In order to restore the overall sample of cases drawn during the field work to their proper proportions of cases in the population, we applied a weighting strategy during the analysis phase. Table 3 presents the weighting strategy we utilized.

Table 3 Profile of Weighting Strategy Used to Restore Sample Cases to Population Characteristics

	Sample Drawn	Weighting Factor	Weighted Sample	Percentage
Police Classification				
Level III - aggravated	13	0.45161	6	3.3
Level II - weapon, bodily harm, party to	61	0.44218	27	14.9
Level I	144	1.02882	148	81.8
TOTAL	218		181	100.0

The weighting strategy slightly reduced the number of cases.[1] The weighted data will only be used to present profiles of the characteristics of the assaults, victims and offenders.[2] This allows us to make estimates to the total population of reported cases.

3.1.2 Characteristics of Sexual Assault Complainants

The vast majority of complainants were female (see Table 4), with male complainants accounting for only five per cent of the sample. The fact that the percentage of male complainants has not increased significantly since the legislative amendments may reflect such factors as the perceived social stigma attached to being a victim of sexual assault, public perceptions of the likely criminal justice system reaction, lack of public awareness of the legal resources available, etc.

How old were the adults who reported sexual assaults to the police? Our findings show that the average age of the complainant (at the time of the assault) was 28 years. Two-thirds (68 per cent) of the complainants were between 18 and 30 years of age, while approximately one-quarter (24 per cent) were between 31 and 40 years of age. The remaining eight per cent of complainants was over 40.

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[1] The weighting strategy was developed using both the 1984/85 and the 1981/82 cases. Thus, while the number of cases for 1984/85 was decreased by the weighting factors, the number of cases from 1981/82 increased.

[2] This style of presentation is being adopted in order to avoid overstating the characteristics of cases in which we drew a census rather than a sample. This is especially important in deriving population estimates from sample statistics.

Although we have data on the marital status of the complainant for a minority of our cases, there were too few such cases to allow one to make population estimates.

Table 4 Selected Sociodemographic Characteristics of Complainants

	Number from Sample	Population Percentage	Estimate
Gender of Complainant			
Female	171	95.0	388
Male	9	5.0	20
TOTAL	180	100.0	408
Missing cases	1		
Age of Complainant			
18 to 30 years	118	68.2	278
31 to 40 years	41	23.7	97
41 or more	14	8.1	33
TOTAL	173	100.0	408
Missing cases	8		
Mean Age:	28.3 years		
Median Age:	26.0 years		
Marital Status			
Single, never married	24	47.1	*
Married/common law	22	43.1	*
Separated/divorced	5	9.8	*
TOTAL	51	100.0	*
Missing cases	130		

Note: An asterisk (*) indicates that there were too few cases to make population estimates.

Source: Weighted Police Database

Because the amendments extended protection to women assaulted by their spouses, even if legally separated, one might have expected a percentage of the incidents to involve married complainants. Although, we found four such reports accounting for just over two per cent of the total, in absolute and relative terms, the number of spouses (or ex-spouses) making a complaint is very low. It is possible that some of these incidents were reported and classified as physical abuse. In any case, the figures show that spouses (and ex-spouses) are not making use of the new provisions to the level that might have been expected. In the following section, we examine the relationship between the victim and the (alleged) offender more closely.

Table 5 Occupation of Complainant by Time Period

	Number from Sample	Percentage
Professional	6	9.2
Skilled	17	26.2
Unskilled	4	6.2
Prostitute	18	27.7
Unemployed	17	26.2
Retired	--	--
Student	3	4.6
Homemaker	--	--
Totals	65	100.1
Missing Cases	116	

Source: Weighted police database.

We have limited information on the socio-economic status of complainants, as defined by their occupation and employment status. Table 5 presents our findings. Given the high number of missing cases, it is difficult to make generalizations regarding the occupational background of complainants although the proportion of complainants who were prostitutes, at the time of the assault, was quite high. Also, approximately one-quarter of complainants were unemployed. The high number of cases for which data were missing suggests that any differences between occupational groups may be due to sampling error rather than real differences in the type of person coming forward to report.

3.1.3 Characteristics of Alleged Offenders

The majority of alleged sexual assaults involved assailants who were complete strangers to the complainant. These comprised 52 per cent of the cases reported. Seventeen per cent involved other strangers who may have been seen or recognized, but not known to the complainant.

Table 6 Relationship Between Victim and Alleged Offender

	Number from Sample	Percentage	Population Estimate
Complete Stranger	85	51.8	212
Stranger	28	17.1	70
Acquaintance	20	12.2	50
Neighbour	3	1.8	7
Boy/girlfriend	7	4.3	17
Spouse/common law	2	1.2	4
Ex-spouse/common law	2	1.2	4
Father	-	-	-
Other relative	1	.6	4
Employer/teacher/ person of authority	4	2.4	8
Trick	12	7.3	30
TOTAL	164	99.9	408
Missing cases	17		

Source: Weighted police database

Our population estimates indicate that there were approximately eight complainants reporting an assault by a spouse in 1984/85. If we include boy/girlfriends in this category, the proportion of reports of assaults by spouses/partners rises to almost eight per cent. Our population estimates would then indicate that there were approximately 25 reports of assaults by current or former spouses/partners in 1984/85.

The people accused of sexual assault are overwhelmingly male (see Table 7). This was the case in 99 per cent of the reported incidents.

We have already noted that reported assaults involving adult complainants are very likely to involve strangers. Background sociodemographic data are not available for many offenders because of the numbers who were complete strangers and/or were not apprehended. In other cases, the data were simply not noted by the police.

Table 7 Selected Sociodemographic Characteristics of the Alleged Offender

	Number from Sample	Percentage	Population Estimate
Gender			
Male	177	98.9	404
Female	2	1.1	4
TOTAL	179	100.0	408
Missing cases	2		
Age			
17 or younger	1	1.7	*
18 to 30 years	28	46.7	*
31 to 40 years	17	28.3	*
41 or more	14	23.3	*
TOTAL	60	99.9	
Missing cases	121		
Mean age	34.0		
Median age	31.0		
Marital Status			
Single	26	56.5	*
Married/common law	16	34.8	*
Separated/divorced	4	8.7	*
TOTAL	46	99.0	
Missing cases	135		

Note: An asterick (*) indicates that there were too few cases to make population estimates.

Source: Weighted police database

The average age of the alleged offender was 34 years. Approximately one-half (47 per cent) were between 18 and 30 years of age and one-quarter (28 per cent) between 31 and 40, while the remaining 23 per cent were over 40. However, given the

large number of missing cases we cannot be certain whether these represent significant differences or if they are a reflection of sampling biases.

Data on the marital status of alleged offenders are available in less than one-quarter of the reports. These data show that over one-half of the assaults were committed by single, never-married offenders. The differences were not, however, statistically significant. Given the high number of missing cases, undue stress should not be placed on this finding as demonstrating a real difference. It is just as likely that these differences reflect sampling biases.

Data are also available on the employment status of alleged offenders in a small minority of the files reviewed. Over half were employed, while approximately 40 per cent were unemployed (see Table 8).

Table 8 Occupation of Alleged Offender

	Number	Percentage
Professional	2	4.4
Skilled	18	39.1
Unskilled	3	6.5
Unemployed	17	37.0
Retired	3	6.5
Student	3	6.5
TOTAL	46	100.0
Missing cases	135	

Source: Weighted police database.

Less than one-third of alleged offenders had no prior criminal record while about one- quarter had a prior criminal record for a sexual offence. Just less than half of the alleged offenders had a prior criminal record for a nonsexual offence. Again we note a sizeable number of missing cases; these alleged offenders may or may not exhibit the same likelihood of having a prior criminal record (see Table 9).

Table 9 Prior Criminal Record of Offender

	Number	Percentage
No prior record	13	29.5
Prior record, sexual offence	11	25.0
Prior record, nonsexual offence	20	45.4
TOTAL	44	99.9
Missing cases	137	

Source: Weighted police database.

3.1.4 Description of the Incidents Reported

In this section, we describe the incidents reported in terms of their timing, number of people involved, context, type of sexual contact and level of violence. Although all cases reviewed were reported in 1984 or 1985, not all reported incidents had taken place in these two years. The vast majority of reports however, concerned incidents that took place in the year of the report. The overwhelming majority of reported incidents involved a single victim and a single offender (see Table 10).

Table 10 Number of Offenders and Complainants

Number of Offenders	Number from Sample	Percentage	Population Estimate
One	161	89.9	367
Two	13	7.3	30
Three or more	5	2.8	11
TOTAL	179	100.0	408
Missing cases	2		
Number of Victims			
One	174	96.7	394
Two	6	3.3	14
TOTAL	180	100.0	408
Missing cases	1		

Source: Weighted police database.

What were the circumstances immediately before the assaults? The results displayed in Table 11 show that approximately 15 per cent of the complainants were at home, while one-half were outside walking or hitchhiking. Approximately 16 per cent of complainants were out on a date, at a bar or at a social gathering. The remaining one-fifth of the reports involved some other activity or situation.

Table 11 Activity Immediately Preceding the Assault by Time Period

	Number from Sample	Percentage	Population Estimate
Complainant at home	25	14.1	58
Complainant outside	87	49.2	201
Date, bar or party	30	17.0	68
Other situation	35	19.8	81
TOTAL	177	100.1	408
Missing cases	4		

Source: Weighted police database.

Intoxicants were involved in a minority of cases. It was interesting that there was a mildly significant difference ($p < .10$) in the proportions of victims and offenders using alcohol or drugs. Twenty-nine per cent of alleged offenders had used alcohol or drugs compared to 35 per cent of complainants (see Table 12).

Table 12 Presence of Alcohol or Drugs in Victim or Assailant

Presence of Alcohol/Drugs	Number from Sample	Percentage	Population Estimate
Victim			
Yes	62	35.3	144
No	115	64.7	265
TOTAL	177	100.0	408
Missing cases	4		
Assailant			
Yes	51	28.7	117
No	127	71.3	291
TOTAL	178	100.0	408
Missing cases	3		

Source: Weighted police database.

Given the findings regarding the activities preceding the assaults, a uniform pattern in the physical locations in which assaults took place was found. As can be seen from Table 13, assaults were most likely to take place in an outdoor location (e.g., park or street). The second most likely location for assaults was the assailant's home or automobile. The least likely location for the assaults was the victim's home.

Table 14 Location of Assault

	Number from Sample	Percentage	Population Estimate
Victim's home	27	15.4	63
Assailant's home or automobile	56	31.7	192
Other inside location	28	15.7	64
Other outside location	66	37.2	152
TOTAL	177	100.0	408
Missing cases	4		

Source: Weighted police database.

What kinds of sexual activities took place? Table 14 displays the percentages of reports that involved various types of sexual contact. These percentages should be considered as minima, as we cannot simply assume that no such contact took place if it was not mentioned in the police report. It may be that some types of sexual contact were not mentioned by the complainant, or were not recorded by the investigating officer. For example, touching or grabbing might not have been recorded if sexual intercourse took place. We assume that these types of potential underestimation are therefore more likely for the "milder" forms of sexual contact and unlikely for attempted or completed genital or anal intercourse.

Over one-half (51 per cent) of the reports included sexual touching or grabbing. In contrast, just less than one-third of the reports involved genital intercourse and combination intercourse and other sexual contact.

Table 14 Type of Sexual Contact

	Number from Sample	Percentage	Population Estimate
Touching/grabbing	92	50.8	207
Masturbation by victim of offender	-	-	-
Oral sex on offender	8	4.4	18
Oral sex on victim	-	-	-
Insertion of finger or object	7	3.9	16
Attempted intercourse	8	4.4	18
Genital intercourse	33	18.2	74
Anal intercourse	8	4.4	18
Combination intercourse and other sexual contact	25	13.8	56
Other sexual contact	4	2.2	9
Base	181		408

Source: Weighted police database.

In Table 15, we have loosely grouped the reports by three categories of sexual contact: (i) no information; (ii) sexual touching; and (iii) anal or genital penetration with a finger, object or penis. Approximately one-third (34 per cent) of the cases in our sample involved penetration, while the proportion of cases that involved sexual touching (but no penetration) was 51 per cent. It was interesting that approximately 14 per cent of the cases in our sample contained no information regarding the nature of sexual contact.

Table 15 Incidence of Penetration

	Number from Sample	Percentage	Population Estimate
No information	26	14.4	58
Sexual touching	93	51.4	210
Penetration	62	34.2	140
TOTAL	181	100.0	408

Source: Weighted police database.

Note: "Penetration" includes the insertion of a finger or object, and attempted or completed anal or genital intercourse. All other types of sexual contact (oral sex, masturbation, touching/grabbing, etc.) are defined as "sexual touching".

The last aspect to be treated in this section concerns the level of accompanying violence. In reviewing these findings, it is important to bear in mind that threats of the use of physical force may not have been necessary to obtain the submission of the complainant to the sexual activity. Victims can also be so frightened or traumatized by the potential threat posed by the aggressor that they submit for fear of the consequences. In other instances, the victim may have initially participated in some form of sexual activity but was made to feel that his or her decision to terminate the activity was unjustified. We point this out simply to indicate that the following statistics may not give a true picture of the forces operating on the victim at the time of the alleged assault.

It was interesting that while approximately 60 per cent of reports noted the use of violence, only about one-third of the reports noted physical injuries to victims. Only one report mentioned psychological harm to the victim as a result of the assault.

Table 16 Accompanying Violence

	Number from Sample	Percentage	Population Estimate
Weapon	29	16.0	65
Threats of harm	48	26.5	108
Use of physical force	108	60.0	245
Physical injury to victim	59	32.6	133
Psychological injury to victim	1	0.6	2
Accompanying offences	13	7.2	29
Base	181		408

Source: Weighted police database.

3.2 Profile of Incidents Reported to WAVAW

Not all sexual assault victims contact the police. According to the 1982 Canadian Urban Victimization Survey, 62 per cent of the sexual assaults that occurred in 1981 were not disclosed to the authorities.[3] We do not have any clear data regarding the extent of underreporting in Vancouver; however, we do have limited information regarding the incidents reported to WAVAW in 1984/85.

In this section, we describe the incidents reported to WAVAW according to the characteristics of the victim, the relationship between the victim and the assailant and the nature of the offence. The reader should keep in mind that our findings are not meant as a profile of the typical sexual assault or the typical victim. To accomplish this, we would need data on the assaults that occurred, but were not reported to the centre.

3.2.1 Characteristics of the Victims

Demographic characteristics captured in the WAVAW case reports included gender, age at the time of the assault, marital status and racial/cultural origins. While gender was reported in all but three cases, information about the victim's age and marital status was missing in over one-third of the cases. Similarly, only 31 per cent of the cases had information about the racial/cultural origins of the victim.

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[3] Canadian Urban Victimization Survey, Female Victims of Crime, Bulletin Four, p.2.

Table 17 Selected Sociodemographic Characteristics of Victims

Gender	Number	Percentage
Female	117	99.2
Male	1	0.8
TOTAL	118	100.0
Missing cases	-	
Age at Time of Assault		
17 or under	21	29.2
18 to 30	39	54.1
31 and over	12	16.7
TOTAL	72	100.0
Missing cases	46	
Marital Status		
Single, never married	56	75.7
Married/common law	10	13.5
Separated, divorced, widowed	8	10.8
TOTAL	74	100.0
Missing cases	44	
Racial/Cultural Origins		
Caucasian	19	51.4
Native	14	37.8
Other	4	10.8
TOTAL	37	100.0
Missing cases	81	

Source: (Unweighted) WAVAW database.

Table 17 presents selected sociodemographic characteristics of victims. All but one of the victims were female. There were significant variations in the age of victims ($p < .02$). For example, over one-half of victims were between 18 and 30 years of age at the time of assault, while less than one-third were under 18 and less than one-fifth were over 30.

The majority of victims were single, never married at the time of the assault. However, these differences may reflect sampling biases rather than real differences in the women coming forward to report sexual assaults to WAVAW.

Because of the small number of cases with information about the racial/cultural origins of victims, any interpretation should be viewed with caution. The majority of victims were reported as being Caucasian.

3.2.2 Relationship Between Victim and Assailant

Our findings regarding the nature of the relationship between assailant and victim are presented in Table 18 and are statistically significant ($p < .05$). Strangers accounted for less than one-half (43 per cent) of the assaults. Assaults by acquaintances, neighbours or friends accounted for 30 per cent of the assaults reported to WAVAW. Assaults by relatives accounted for less than ten per cent of the reports, while boyfriends were cited as the assailant in five per cent of the reports.

There appear to be no statistically significant relationships between the age of the victim and the relationship of the assailant to the victim (Table 19). However, the large number of missing cases impedes our ability to accurately determine whether or not observed differences are significant.

Table 18 Nature of Relationship Between Assailant and Victim

	Number	Percentage
Stranger	43	43.0
Acquaintance/neighbour/ Family friend	30	30.0
Father	6	6.0
Other relative	3	3.0
Husband/spouse	-	-
Boyfriend	5	5.0
Other	13	13.0
TOTAL	100	100.0
Missing cases	18	

Source: WAVAW database.

Table 19 Crosstabulation of Relationship of Assailant to Victim by Age of Victim

(Number of Cases)

	Age of Victim			
	17 or less	18 to 30	31 and over	Total
Stranger	6	19	5	30
Spouse/partner	2	4	2	8
Friend/associate	9	13	42	26
TOTAL	17	36	49	64
Missing cases				54

Source: WAVAW database

3.2.3 Description of the Incidents Reported

In this section, we describe the incidents in terms of where they happened, the type of sexual contact, the amount of accompanying violence and their effect on the victim.

Table 20 displays the physical location of the assault. Approximately one-quarter (28 per cent) of the assaults occurred in the victim's home and 54 per cent occurred in an outside location.

Table 20 Physical Location of Assault

	Number	Percentage
Victim's home	23	28.0
Offender's home	6	7.3
Other inside location	9	11.0
Other outside location	44	53.7
TOTAL	82	100.0
Missing cases	36	

Source: WAVAW database

A strong association exists between the relationship of the assailant to the victim and the location of the assault (see Table 21). More than three quarters of the cases involving assaults by strangers took place at outside locations. Conversely, most of the attacks involving a spouse or relative, and many of the attacks by a friend or associate, took place in either the victim's or the alleged offender's home.

Table 22 displays the incidence of drug and/or alcohol use by both the victim and the assailant at the time of the assault. In the vast majority of cases this information was not specified in the case files. In the cases where this information was recorded, approximately one-half (12 out of 23) of the victims and 40 per cent (14 of 33) of the assailants had used drugs or alcohol at the time of the assault.

Table 21 Crosstabulation of Relationship of Assailant to Victim by Where Attack Occurred

(Number of Cases)

	Stranger	Spouse/Partner Relative	Friend/ Associate	Totals
Victim's home	8	8	6	22
Offender's home	1	1	5	6
Other inside	4	-	7	11
Other outside	31	-	15	46
TOTAL	44	9	33	85
Missing cases				33

Source: WAVAW database

Table 22 Incidence of Drugs/Alcohol in Assailant and Victim

	Number	Percentage
Victim		
Yes	12	10.2
No	11	9.3
Not Specified	95	80.5
TOTAL	118	100.0
Assailant		
Yes	17	14.4
No	16	13.6
Not Specified	85	72.0
TOTAL	118	100.0

Source: WAVAW database

As Table 23 displays, the majority of reported assaults involved genital intercourse. In over one-half of the cases (51 per cent), the victim reported the occurrence of vaginal penetration. As well, there was a low incidence of anal or oral intercourse or masturbation of the assailant reported by victims. Molestation was reported in seven per cent of the cases.

Table 23 Types of Sexual Contact

	Number	Percentage
Vaginal penetration	60	50.8
Anal penetration	5	4.2
Oral intercourse	7	5.9
Masturbation of assailant	1	0.8
Molestation of victim	8	6.8
Base	118	

Source: WAVAW database

Note: These data are not recorded in many of the files, thus the figures should be considered as minima. Also, more than one type of sexual contact for a given incident of sexual assault may be indicated in the Table.

Table 24 presents the classification of the assault by WAVAW. Over one-half of the reports were classified as Level I sexual assaults, while one-third were classified as Level II assaults. These figures are much different than the police classifications. Small minorities of reports were classified as aggravated sexual assaults, threatened/attempted sexual assaults, or incest/sexual abuse.

Table 24 Classification of the Assault by WAVAW

	Number	Percentage
Level III	5	5.0
Level II	30	30.0
Level I	56	56.0
Threatened/attempted	2	2.0
Incest/sexual abuse	7	7.0
TOTAL	100	100.0
Missing cases	18	

Source: WAVAW database

Table 25 Incidence of Accompanying Violence

	Number	Percentage
Use of a weapon	18	15.3
Threats of bodily harm	16	13.6
Bodily harm	34	28.8
Wounding/maiming	8	6.8
Threats to third person	2	1.7
Fear of death	25	21.2
Intimidation/harassment	13	11.0
Base	118	

Source: WAVAW database

Note: These are the percentages of reports in which these types of accompanying violence were mentioned. This may understate the incidence and level of violence as files do not mention if there was a lack of violence involved in the incident.

The changes in the classification of sexual assaults included in Bill C-127, in particular the increased emphasis on the violent aspects of sexual assaults, may have increased WAVAW workers' awareness of this dimension. Thus, interpretations regarding the incidence of the reported use of violence (e.g., bodily harm, Table 25) could reflect an increase in the use of violence, a change in reporting practices or possibly both of these factors. Another indication of the incidence of violence accompanying the assault in the sampled cases concerns whether or not the victim received medical attention (see Table 26).

Table 26 Medical Attention

Medical Attention	Number	Percentage
Yes	57	48.3
No	34	28.8
Not specified	27	22.9
TOTAL	118	100.0

Source: WAVAW database

As Table 27 shows, only about one-third of the women who called WAVAW indicated that they had reported the sexual assault to the police. An almost equal proportion of women who called WAVAW indicated that the police were not contacted, while about one-fifth remarked that the police had been involved, but that they had not contacted them themselves.

Table 27 Reporting to the Police

Police	Number	Percentage
Yes	43	36.4
No	36	30.5
Not contacted, but involved	23	19.5
Not specified	16	13.6
TOTAL	118	100.0

Source: WAVAW database.

The final dimension that we examined concerns the impacts of the assault on the victim,as assessed by WAVAW. In the vast majority of cases (92 per cent of the reports) the WAVAW volunteer indicated that the victim sustained psychological damage (see Table 28). While substantial minority of reports (25 per cent) indicated that the victim had sustained bodily harm, only two per cent of cases indicated that the victim had sustained permanent disabilities.

Table 28 Incidence of Different Impacts of the Assault on the Victim

	Number	Percentage
Bodily harm	30	25.4
Permanent disability	2	1.7
Psychological damage	108	91.5
Family alienation	18	15.3
Residence change	9	7.6
Job change	4	3.4
Unwanted pregnancy	3	2.5
Base	118	

Source: WAVAW database.

Table 29 presents data regarding the emotional state of the victim as assessed by WAVAW. A majority (74 per cent) of the victims were recorded as being "emotionally upset, feeling guilty, or depressed." Approximately one-third (38 per cent) of the reports indicated that the victims required medical attention. Two-thirds of the victims were assessed by the WAVAW volunteers as requiring counselling.

Table 29 Emotional State of the Victim as Assessed by WAVAW

	Number	Percentage
Controlled emotional state	9	7.6
Emotionally upset, feeling Guilty or depressed	88	74.6
In need of medical attention	44	37.3
In need of counselling	79	67.0
Base	118	

Source: WAVAW Database.

Note: Any one report may have included more than one assessment, regarding the victim's emotional state.

3.3 Processing of Reports and Outcomes

In the first section of this chapter, we described the types of sexual assault incidents reported to the Vancouver police during the post-amendment study period. In this section we explore what happened as a result of the report being made to the criminal justice system. We begin by looking at the extent to which other agencies become involved with complainants. We then consider the proportions of reports that are considered as founded (or true), the proportion that result in charges being laid by the police, and the factors that help determine these outcomes. We conclude by describing the charges laid, pleas, verdicts and sentences.

3.3.1 Reporting Sequence and Agency Involvement

The police were the agency of first disclosure in 43 per cent of the cases (see Table 30). Family members or personal friends were listed as the first person to whom the assault was disclosed in about one-fifth of the cases.

Table 30 Person or Agency to Whom the Complainant First Disclosed the Assault

	Number from Sample	Percentage	Population Estimate
Police	73	42.9	175
Family	13	7.7	31
Friend	21	12.4	51
Boy/girlfriend or spouse	14	8.2	34
MSSH/social worker	2	1.2	5
Hospital	5	2.9	12
Passerby/witness	19	11.2	45
Other	23	13.5	55
TOTAL	170	99.9	408
Missing cases	11		

Source: Weighted police database.

Three quarters (77 per cent) of the reports to the police were made by the victim. If the victim did not report personally to the police, it was most often done by a witness or passerby, friend or neighbour, or relative (e.g., parent). Combined, these three groups accounted for approximately 15 per cent of the reports to the police (see Table 31). Five per cent of assaults were reported to the police by hospitals or social workers.

A small minority (17 per cent) of the reports to the police occurred over 24 hours after the assault took place. If the report was made more than 24 hours after the assault, we looked at the reasons for the delay given in the police report. The 1983 legislative changes included the abrogation of the rules of evidence regarding "recent complaint". The assumption prior to passage of Bill C-127 had been that an allegation was likely to be fabricated if the victim did not report the incident at the first "reasonable" opportunity. The recent complaint rule was dropped by the new legislation in recognition that shame, fear of retaliation or fear of the impact on the victim's reputation or personal relationships do not encourage prompt complaint.[4]

[4] See Ruebsaat, The New Sexual Assault Offences, pp.50-51.

Table 31 Relationship of Complainant to the Victim

	Number from Sample	Percentage	Population Estimate
Same person	134	77.0	315
Parent or relative	2	1.1	4
Spouse, boy/ girlfriend	5	2.9	12
Friend or neighbour	7	4.0	16
Social worker/ hospital	9	5.2	21
Passerby/witness	14	8.0	33
Other	3	1.7	7
TOTAL	174	100.0	408
Missing cases	7		

Source: Weighted police database.

If we examine the reasons given for any delay, we find that the most frequently given reason was that the victim was not the person who made the report to the police and there was a delay in disclosing the assault to the person who did report. This reason was cited for just under one-third of delayed reports. Other reasons included not knowing who to contact or what to do, fear of retaliation, or the belief that the police could not do anything.

Table 32 presents the order in which various agencies were contacted. If we consider the order in which the police, medical facilities, the sexual assault centre and other agencies were contacted, we find that police are the most popular agency of first contact. In only about six per cent of the police files was there mention of any contact with the sexual assault centre. In fact, only two per cent of the complainants noted that they went to a sexual assault centre before contacting the police. These figures may understate the true use of sexual assault centres by victims who report to the police. If use of the centre as not mentioned to the police and thus not noted by the investigating officer, or if the complainant sought assistance from the centre after reporting to the police, then this information would not be in the police files.

Table 32 Order in Which Various Agencies Were Contacted

	Number from Sample	Percentage	Population Estimate
Police			
First	164	91.6	374
Second	13	7.3	29
Third	2	1.1	5
TOTAL	179	100.0	408
Missing cases	2		
Medical Facilities			
First	11	6.3	25
Second	62	35.2	144
Third/fourth	2	1.1	5
No contact	101	57.4	234
TOTAL	176	100.0	408
Missing cases	5		
Sexual Assault Centre			
First	4	2.3	10
Second/third	7	4.0	16
No contact	162	93.6	382
TOTAL	173	99.9	408
Missing cases	8		
Other Agencies			
First	3	2.6	11
No contact	112	97.4	397
TOTAL	115	100.0	408
Missing cases	66		

Source: Weighted police database.

If we look at the proportions of incidents for which no contact was made with the various (non-police) agencies, we find that over one-half of the reports indicate that victims did not receive medical attention. Table 33 presents the locations where medical attention was sought by the remaining 43 per cent. Not surprisingly, the majority

(72 per cent) of the victims who received medical attention went to the Shaughnessy Hospital.[5]

Table 33 Where Medical Attention Received

	Number from Sample	Percentage	Population Estimate
Shaughnessy Hospital	55	72.4	125
St. Paul's Hospital	9	11.8	20
Vancouver General Hospital	4	5.3	9
Lion's Gate Hospital	-	-	-
Private clinic	5	6.6	11
Unspecified	3	3.9	7
TOTAL	76	100.0	172

Source: Weighted police database.

We asked the key informants about the levels and sources of interagency referrals. Respondents from WAVAW remarked that they place a high priority on referring (and accompanying) sexual assault victims to the hospital when required. According to one WAVAW volunteer, the first question victims are asked concerns whether or not they have received medical attention.

The respondents from the Shaughnessy Hospital remarked that they do not routinely refer victims to sexual assault centres. According to the doctors on the Sexual Assault Assessment Team, the hospital provides information about WAVAW to female victims and will notify the centre at the victim's request.

This is consistent with the perceptions of the respondents from WAVAW. According to them, about five per cent of their referrals come from the police, while a further five per cent come from area hospitals. The vast majority (75 per cent) are self-referrals, while about 15 per cent are referrals from social services agencies.

Respondents from the police remarked that they accompany victims to the hospital whenever necessary. They strongly suggest that victims have the sexual assault examination in order to collect evidence.

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[5] The Shaughnessy Hospital is the regional sexual assault medical treatment/assessment centre.

The respondents from the police did not estimate the proportion of cases in which they refer victims to sexual assault centres for counselling. Similarly, they were unable to estimate the proportion of referrals which they receive from sexual assault centres.

3.3.2 Founding and Charging Decisions by the Police

Lorenne Clark and Debra Lewis, in their 1977 study of 116 rapes reported to the Metropolitan Toronto police concluded:

> The progress of a rape case through the criminal justice system reflects a highly selective process of elimination. Only a fraction of all rapes are reported; only a fraction of reported rapes are classified as founded; only a fraction of founded cases lead to an arrest; and only a fraction of suspects arrested are convicted.[6]

In this report, we have no evidence to offer on the subject of reporting rates, and we consider conviction rates in the following section. In this subsection, we look at the attrition of cases reported to the police in Vancouver and the characteristics of the victim, the assailant, the offence or other evidence that help explain founding and charging decisions.

We focus on three major types of outcomes or response by the police to a report of sexual assault. Occurrence reports are either labelled by the Vancouver police as "unfounded" or proceeded with in some manner (i.e., "founded"). Reports are considered unfounded if the police believe the story to have been fabricated by the complainant or if no (sexual assault) crime took place. Reports are proceeded with (i.e., founded) if the police believe the complainant's report. Founded reports are labelled cleared by charge if the crown decides that criminal charges can be laid.[7]

In many founded cases, however, the crown is unable to lay a charge. For the purposes of this study, these cases are labelled as "cleared otherwise". Reports are cleared otherwise if...

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[6] Lorenne Clark and Debra Lewis, Rape: The Price of Coercive Sexuality, p. 57.

[7] During the interviews with police respondents, they remarked that they do not make the decision as to whether or not to lay charges in any particular case. The respondents noted that the charging decision rests solely with the Crown Charge Approval Board.

> the police cannot lay an information even though they feel that they have identified the offender and have enough evidence to support the laying of an information. This would happen for example, in the case of diplomatic immunity, or if the victim refuses to sign a complaint, or if the offender dies before (s)he can be formally charged.[8]

Cases may also be cleared otherwise where "the police have exercised discretion and have decided not to charge although the offender has been identified and there is sufficient evidence to proceed with a charge".[9] Although we could not find any clear definition of the circumstances that might lead to the exercise of such discretion, we note that one of the criterion used by the Crown Charge Approval Board in the laying of charges is that "there is a substantial likelihood of conviction." This may be a major factor in the police use of discretion, however, we have no evidence to support this hypothesis. However, as Clark and Lewis have noted:

> The police are unwilling to push a case to prosecution if they know an acquittal is likely, because a great deal of time, energy and public money goes into the preparation of each case. Also, the police know just how difficult it is to achieve conviction in a rape case, and how reluctant crown attorneys are to prosecute problematical cases.[10]

In Table 34, we display the distribution of reports according to our tripartite classification of unfounded, cleared by charge and cleared otherwise. The proportion of reports considered by the police as unfounded was 13 per cent. The proportion of reports that were cleared by charge was 21 per cent of all reports (or 25 per cent of founded reports). The remaining 75 per cent of founded reports (66 per cent of all cases) were cleared otherwise because the Crown Charge Approval Board did not approve the laying of charges.

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[8] Statistics Canada, Canadian Crime Statistics, (Ottawa: Supply and Services, 1986), p.18.

[9] This quote is derived from the policies and procedures manual used by the Vancouver police, dated June 15, 1987, page 2.11.

[10] Clark and Lewis, Rape: the Price of Coercive Sexuality, p.59.

Table 34 Outcomes of Report, 1984/85

	Number from Sample	Percentage	Population Estimate
Unfounded	20	13.0	53
Cleared by charge	33	21.4	87
Otherwise	101	65.6	268
TOTAL	154	100.0	408
Missing cases	27		

Source: Weighted police database

According to Holmstrom and Burgess, the police do not consider all claims of rape to be equal, rather they are distinguished by four criteria: (i) the quality and consistency of information obtained; (ii) the moral character and behaviour of the victim; (iii) the relationship between victim and offender; and (iv) the characteristics of the offender.[11]

We tested a number of variables related to these four criteria in order to determine their effect on whether or not the report was considered as founded and, if founded, whether or not charges were laid. The following exhibits display our findings. We also note that according to the respondents from the Vancouver police, a number of factors are considered in the founding decision. These factors include the relationship between complainant and accused, the credibility of the complainant, and the existence of corroboration for either the complainant or accused.

Table 35 displays the statistically significant relationships (based on chi squares calculated for each bivariate contingency table) between victim characteristics and the founding decision.[12] There were no significant associations between the founding decision and such variables as the age, gender or marital status of the victim. We did find that the perceived moral character and conduct of the complainant appear to influence the founding decision.

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[11] Holmstrom and Burgess, The Victim of Rape: Institutional Reactions, (John Wiley & Sons, 1987), pp.41-42.

[12] Note that we only report bivariate relationships. Some of these independent or predictive variables may reflect antecedent or underlying variables not measured. Multivariate analyses would be necessary to determine how sets of variables coalesce to produce outcomes of interest.

For example, over one-half (59 per cent) of the reports that contained the suggestion that the victim was lying were considered as unfounded compared with approximately three per cent of reports that did not contain this suggestion ($p<.001$). Similarly, one-half of the reports containing a suggestion that the victim was promiscuous or of bad moral character were considered as unfounded compared with 11 per cent of reports lacking this judgement ($p<.004$).

If the complainant had a prior criminal or juvenile record ($p<.07$),[13] or if the complainant was intoxicated at the time of the offence ($p<.09$), the report was more likely to be considered unfounded. More than one-fifth (22 per cent) of the reports where the victim was intoxicated at the time of the offence were considered as unfounded compared with ten per cent of reports where the victim was not intoxicated when the assault took place.

[13] The problem here is that the vast majority of reports did not indicate whether or not the complainant had a prior record. Therefore, we do not know if there are systematic differences between the reports that indicate this information and those that do not.

Table 35 Victim Characteristics Significantly Associated With Founding of Sexual Assault Reports, 1984/85

(Row Percentages)

	Unfounded	Founded	Number	Significance
Accused of lying	58.6	41.4	29	$x^2=71.75$
No suggestion	2.5	97.5	122	$p<.001$
TOTAL	13.2	86.8	151	
Missing cases			30	
Suggestion of bad Moral character	50.0	50.0	10	$x^2=8.64$
No suggestion	10.6	89.4	142	$p<.004$
TOTAL	13.2	86.8	152	
Missing cases			29	
Prior Record	40.0	60.0	5	$x^2=3.43$
None	4.5	95.5	22	$p<.07$
TOTAL	11.1	88.9	27	
Missing cases			154	
Intoxicated at time of offence	22.0	78.0	50	$x^2=3.04$
Not intoxicated	9.7	90.3	103	$p<.09$
TOTAL	13.7	86.3	153	
Missing cases			28	
Vulnerable due to mental or physical disabilities	31.2	68.8	16	$x^2=4.36$
Not vulnerable	10.9	89.1	138	$p<.04$
TOTAL	13.0	87.0	154	
Missing cases			27	
Employed	--	100.0	26	$x^2=16.84$
Not employed	47.1	52.9	17	$p<.005$
Prostitute	7.1	92.9	14	
Student	--	100.0	3	
TOTAL	15.0	85.0	60	
Missing cases			121	

Source: Weighted police database

Note: All tests of significance and association are calculated using the unweighted police database.

There was a strong relationship between the complainant's employment status and the founding decision. Approximately one-half (47 per cent) of the reports that indicated that the complainant was unemployed were considered as unfounded, while none of the reports involving an employee complainant were classified in this way ($p<.005$). Given the large number of missing cases, caution must be exercised in interpreting these findings as we do not know whether there are systematic differences between the missing cases and those that contained this information. Finally, we note that where the report indicated that the complainant was vulnerable due to physical or mental disabilities, the report was almost three times more likely to be considered as unfounded ($p<.04$).

Table 36 presents the association between the founding decision and the relationship between complainant and assailant. While the association displayed does not achieve conventional levels of statistical significance (i.e., $p<.05$), the finding is nevertheless interesting. Reports of sexual assault where the complainant knew the assailant prior to the assault were twice as likely to be considered as unfounded as reports where the complainant had not previously known the assailant ($p<.10$).

Table 36 Association Between the Founding Decision and the Relationship of the Assailant to the Complainant, 1984/85

(Row Percentages)

	Unfounded	Founded	Number	Significance
Spouse/partner	18.2	81.8	11	
Friend/associate	20.8	79.2	24	$x^2=6.13$
Stranger	9.8	90.2	102	$p<.10$
Trick	--	100.0	12	
TOTAL	11.4	88.6	149	

Source: Weighted police database

Note: All tests of significance and association are calculated using the unweighted database.

There were no statistically significant relationships between the founding decision and offender characteristics such as age, gender or marital status. Neither was there an association between the offender's prior criminal record and the founding decision.

There were, however, associations between a number of offence characteristics and the founding decision (see Table 37). For example, all of the incidents in which the

offender used a weapon were considered as founded. In comparison, 16 per cent of reports where the offender did not use a weapon were considered as unfounded ($p<.03$).

Table 37 Offence Characteristics Significantly Associated with the Founding Decision, 1984/85

(Row Percentages)

	Unfounded	Founded	Number	Significance
Use of weapon	--	100.0	25	$x^2=5.36$
No weapon	15.6	84.4	128	$p<.03$
TOTAL	13.1	86.9	153	
Threats of physical Harm	2.3	97.7	43	$x^2=8.57$
No Threats	17.3	82.7	110	$p<.004$
TOTAL	13.1	86.9	153	
Physical force used	8.2	91,8	98	$x^2=6.10$
No force used	21.8	78.2	55	$p<.02$
TOTAL	13.1	86.9	153	
Physical injuries to victim	5.9	94.1	51	$x^2=4.25$
No apparent injuries	15.7	84.3	102	$p<.04$
TOTAL	12.4	87.6	153	
Resistance by victim	6.4	93.6	94	$x^2=8.61$
No resistance	23.3	76.7	43	$p<.04$
TOTAL	11.7	88.3	137	

Source: Weighted police database

Note: All tests of significance and association are conducted on the unweighted database.

If the alleged offender threatened the victim with physical harm, then the report was much less likely to be considered as unfounded than if physical harm was not threatened ($p<.004$). Similarly, if physical force was used on the victim, then the report was less likely to be considered as unfounded than if no physical force was used ($p<.02$). In the same vein, if the victim was physically injured during the assault, then the report

was almost three times less likely to be considered as founded than if the victim did not sustain any apparent physical injuries ($p<.04$).

We also note that if the report indicated that the victim did not resist the assailant, the report was almost four times more likely to be considered as unfounded than if the report indicated that the victim put up physical or verbal resistance ($p<.04$). This finding suggests that the victim is perceived by the police as at least partly to blame for the assault if she did not resist the assailant.

We were surprised to find that there was no significant association between the existence of corroborating material or forensic evidence or witnesses and the founding decision. We did find an interesting association between the founding decision and the person or agency to whom the victim first disclosed the assault (see Table 38). Reports that indicated that the victim had first disclosed the assault to a social agency (i.e., social services, hospital, rape crisis centre) were more likely to be considered as unfounded than assaults disclosed first to the police, family members or friends ($p<.008$).

Table 38 Association Between Who Victim First Disclosed the Assault and to the Founding Decision, 1984/85

(Row Percentages)

	Unfounded	Founded	Number	Significance
Police	8.5	91.5	59	
Family/friend	12.2	87.8	41	$x^2=25.65$
Social agency	66.7	33.3	9	$p<.008$
Other	8.3	91.7	36	
TOTAL	13.1	86.9	145	

Source: Weighted police database

Note: All tests of significance and association are calculated from the unweighted database.

We now turn to the factors significantly associated with the decision to lay charges in founded reports of sexual assault. Table 39 displays our findings. There were no significant associations between the charging decision and offender characteristics such as gender, age, marital status or prior criminal record.

Table 39 Factors Significantly Associated With Charging in Founded Sexual Assault Reports, 1984/85

(Row Percentages)

	Charges Laid	No Charges	Number	Significance
Victim Characteristics				
Employed	7.7	92.3	26	
Not employed	44.4	55.6	9	$x^2=9.55$
Prostitute	30.8	69.2	13	$p<.09$
Student	--	100.0	3	
TOTAL	19.6	80.4	51	
Missing cases			83	
Accused of lying	--	100.0	12	$x^2=3.80$
No suggestion	26.7	73.3	120	$p<.06$
TOTAL	24.2	75.8	132	
Missing cases			2	
Relationship Between Victim and Assailant				
Spouse/partner	22.2	77.8	9	
Friend/associate	38.9	61.1	18	$x^2=9.13$
Stranger	19.6	80.4	92	$p<.03$
Trick	33.3	66.7	12	
TOTAL	23.7	76.3	131	
Missing cases			3	
Offence Characteristics				
Physical force used	30.0	70.0	90	$x^2=5.01$
No physical force	9.5	90.5	42	$p<.03$
TOTAL	23.5	76.5	132	
Missing cases			2	
Corroborating evidence	31.2	68.8	93	$x^2=7.17$
No corroboration	7.3	92.7	41	$p<.008$
TOTAL	23.9	76.1	134	

Source: Weighted police database

Note: All tests of significance and association are conducted on the unweighted database.

There were statistical associations between two complainant characteristics and the charging decision, however both of these relationships were very mild. The first

concerned the complainant's employment status. The report was more likely to be cleared by charge if the complainant was either unemployed or a prostitute than if the complainant was either a student or employed full- or part-time ($p<.09$).[14] It may be that since reports where the complainant was unemployed or a prostitute were less likely to be founded, the reports for these groups that were considered founded included characteristics or factors that were more likely to involve the laying of charges.

We also note that none of the founded cases where there was a suggestion that the victim was lying were cleared by charge. In contrast, 27 per cent of the founded reports that did not contain this suggestion were cleared by charge. Although this difference was statistically significant, the relationship was weak ($p<.06$).

While the relationship between the assailant and complainant did not appear to influence the founding decision, it is significantly associated with the charging decision ($p<.03$). One-fifth of the reports involving stranger assaults were cleared by charge, while 22 per cent of spousal assaults, one-third of assaults against prostitutes by their customers and 39 per cent of assaults by friends or associates were cleared by charge. The lower charging rate for stranger assaults probably reflects the greater difficulties identifying and locating these assailants.

Founded reports in which physical force was used on the victim were more than three times as likely to be cleared by charge than assaults where physical force was not used on the victim ($p<.03$). Finally, we note that founded reports that were corroborated by forensic or material evidence or witnesses were more than four times as likely to be cleared by charge as reports without corroboration ($p<.008$).

The 1983 amendments dropped the recent complaint rule. If we distinguish reports by whether or not they were made to the police within 24 hours of the incident, we find no statistically discernible impacts on outcomes from the timing or delay in reporting. Although this indicator suggests that a rapid complaint is not a factor in charging, this breakdown may not be refined enough to capture the implications of late reporting on founding and clearance rates. It is possible that the later the report, the greater the likelihood that a complaint would be unfounded. For example, respondents from the crown and defence continue to perceive the recency of complaint as an important factor influencing final court outcomes.

Before turning to look at the outcomes of cases at the court level, we look at one final variable: the initial police classification of the report according to the Criminal Code, and its relationships to founding and charging rates. Subsequent to the amendments, we find that Level I reports were more likely to be considered unfounded than were Level II or Level III reports. In fact, none of the Level III reports were

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[14] We note that the large number of missing cases may differ systematically from those cases presented in the exhibit, therefore, caution should be exercised in interpreting these findings.

considered unfounded and only one report of Level II sexual assault received this classification. In contrast, 16 per cent of Level I reports were considered as unfounded ($p < .04$). There were not statistically significant differences in the clearance rates when broken down by the initial police classification of the report.

Table 40 Relationships Between the Initial Police Classification of the Assault and the Founding and Charging Decisions, 1984/85

(Column Percentages)

Founding Decision	Level III	Level II	Level I	Total
Unfounded	--	4.2	15.9	13.5
Founded	100.0	95.8	84.1	86.5
Number of cases	5	24	126	155
		$x^2 = 6.77$	$p < .04$	
Charging Decision				
Charges laid	40.0	26.1	22.6	23.9
No charges	60.0	73.9	77.4	76.1
Number of cases	5	23	106	134
		$x^2 = 1.25$	$p < .54$	

Source: Weighted police database

Note: All tests of significance and association are calculated from the unweighted database.

We believe the differences in founding rates stem from two factors: (i) the sheer volume of Level I cases and (ii) the quality of evidence available. Incidents that would be classified as Levels II or III are more likely to include some level of violence such as use of threats or physical force, physical injuries to the victim and the use of a weapon, than are incidents classified as Level I. As noted, each of these factors was significantly associated with the founding decision.

3.3.3 Outcomes at Court

In this section, we examine the outcomes at the court level. We rely on crown files at the County and Provincial Court levels in order to describe court outcomes. We tracked all cases in our sample that were sent to the crown. In total, 43 of the 218 cases of sexual assault reported to the police in 1984/85 were processed by the crown. Note that these cases were matched to the police files reviewed. Thus, we were able to determine with a great deal of certainty the differences between those cases that go to

court and those that do not, as well as differences between cases that end in conviction and those ending in dismissal, withdrawal or acquittal.

We begin by summarising the attrition of reported incidents as they progress through the criminal justice system, based on the (unweighted) police/crown database.[15] Table 42 displays the number of reports made during 1984/85 according to the initial police classification of the offence. We also indicate the charges pursued by the crown for the reports sampled. Finally, the exhibit displays the number of cases that reached final adjudication.

As can be seen from Table 41, just less than 20 per cent of the reports made to the police had charges laid by the crown. Four of the thirteen aggravated sexual assaults (Level III) reported to the police in 1984 and 1985 were charged by the crown, committed for trial and reached final adjudication. Similarly, 15 of the 61 sexual assaults involving bodily harm, use of a weapon or threats to a third party (Level II) were charged by the crown. One of these was dropped before the preliminary hearing and a second was withdrawn during the trial. In terms of Level I sexual assaults, 24 of the 144 reports included in our sample were charged by the crown. Of these, 18 were committed for trial and reached final adjudication.

Our findings regarding the attrition of cases involving sexual assaults Levels II and III are based upon a census of these reports during 1984 and 1985. Thus, the fact that approximately 31 per cent of the founded Level III assaults were committed for trial and reached final adjudication, while only about 22 per cent of the founded Level II assaults were committed for trial represents a significant difference (i.e., all differences between census populations are significant).

Significantly higher proportions of the founded Level II and III cases pursued by the crown were committed for trial than were founded cases involving Level I sexual assaults. Three quarters of the Level I assaults in which charges were laid by the crown were committed for trial and reached final adjudication. The fact that sexual assaults classified as Levels II or III are more serious than those classified as Level I probably explains the higher rate at which they are committed for trial.

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[15] Given that the findings reported throughout the remainder of this chapter are based upon the unweighted database, we have not calculated population estimates.

Table 41 Attrition of Reported Incidents Through the Criminal Justice System

(Number of Cases)

	Number of Reports to Police from Sample	Number of Reports Pursued by the crown	Number of Cases Committed for Trial	Number of Cases Reaching Final Adjudication
Level III - aggravated	13	4	4	4
Level II - bodily harm, weapon, party to	61	15	14	13
Level I - simple	144	24	18	18
TOTAL	218	43	36	35

Source: Unweighted police database.

Table 42 Cases Committed for Trial by the Level of Court

(Number of Cases)

	Court Involved					
	Provincial (Summary)	Provincial (Judge)	County (Judge)	County (Jury)	Other	Total
Level III aggravated	-	-	2	2	-	4
Level II bodily harm, weapon, party to	-	2	4	7	1	14
Level I	3	5	5	5	-	18
TOTAL	3	7	11	14	1	36

Source: Unweighted Police Database.

Table 42 presents the level of court involved for the 36 cases in our sample that were committed for trial. Approximately two-thirds of the cases were heard at County Court. Approximately 40 per cent were jury trials, while just less than one-third were heard by a judge at the County Court.

Table 43 Final Court Outcome by Most Serious Charge

(Number of Cases)

	Total Number of Reports From Sample	Cases Committed for Trial	Cases Withdrawn Before Adjudication	Convicted[16]	Not Convicted[17]
Level III	13	4	-	1	3
Level II	61	14	1	10	3
Level I	144	18	-	9	9
TOTAL	218	36	1	20	15

Source: Unweighted database.

Table 43 presents the final court outcomes broken down by the most serious charge. Twenty of the 36 cases committed for trial (56 per cent) ended in conviction.

[16] Convicted includes guilty plea, guilty as charged and guilty to a lesser charge.

[17] Not convicted includes dismissal, acquittal and unable to reach a verdict.

Table 44 Summary of Attrition Rates

(Percentages)

	Rate at Which Charges are Laid	Rate at Which Cases are Committed for Trial	Rate of Conviction[18]	Base
Level III	30.8	100.0	25.0	13
Level II	28.8	93.3	71.4	54
Level I	23.3	75.0	50.0	122
TOTAL	25.9	83.7	55.6	189
Missing cases				29

Source: Unweighted police database.

Table 44 displays a summary of the attrition rates for cases as they move through the criminal justice system. The exhibit presents the (percentage) rates at which charges are laid in founded cases, the proportion of cases committed for trial and the proportion of these cases ending in conviction. The highest rates for charging and cases committed for trial involved aggravated sexual assaults. It was interesting that the highest rate of conviction was for cases involving Level II sexual assault.

In the remainder of this section, we examine in greater detail the cases that were committed for trial and ended in adjudication. This profile should provide clearer indications of the evidentiary factors that affected conviction rates by charge. In particular, we examine the differences between cases ending in conviction and those cases that were acquitted, dismissed or withdrawn at final adjudication. This includes profiles of the numbers and types of witnesses and the types of evidence presented at each trial.

Table 45 presents a profile of the cases that ended in conviction. One of the most striking findings is that seven of the nine cases involving Level I sexual assaults included either testimony by eyewitnesses or police who saw the defendant physically assaulting the victim. Similarly, all but three of the Level II cases included testimony

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[18] Rates of conviction can also be calculated using the total numbers of founded reports as the base. If we use this method of calculation, we find that the rates of conviction were 7.7 per cent for Level III founded reports, 16.9 per cent for Level II founded reports and 7.4 per cent for Level I founded reports. Using this method of calculation, the overall rate of conviction for founded reports of sexual assault would be 16.4 per cent.

from witnesses to the incident or police who saw evidence of the assault (e.g., evidence of forcible entry). The Level III case involved two victims sexually assaulted by the same defendant (i.e., corroborating witnesses).

Another striking finding evident in Table 45 concerns the wide variations in sentencing. Two offenders convicted of Level I sexual assaults received relatively small fines ($400 and $500, respectively). Two other offenders convicted of Level I assaults received small fines and probation orders. The jail terms handed down to five offenders ranged from seven months to fourteen years. The 14-year sentence was the longest term of imprisonment given to any of the defendants. In all but one of the cases involving Level II sexual assaults, jail terms of at least one year were handed down. In the other case, a favourable presentencing report may have persuaded the judge to hand down a sentence of 36 months' probation. The offender convicted of aggravated sexual assault was sentenced to a 12-year term of incarceration.

Table 45 Profile of Cases Ending in Conviction

Most Serious Charge	Number and Types of Witnesses	Types of Evidence	Final Outcomes
Sexual Assault (Level I)	Victim Police 2 victims' friends	Victim statement of assault Police testimony	$450 fine 9 months probation Saw evidence
Sexual Assault (Level I)	Victim Police First person disclosed	Victim statement of assault	$500 fine 24 months probation Police testimony Testimony about assailant
Sexual Assault (Level I)	Victim 2 police Eyewitness	Victim statement of assault Police testimony	7 months jail $250 fine Witness to incident
Sexual Assault (Level I)	Victim 2 police Eyewitness First person disclosed	Victim statement of assault Police testimony Police saw assault Witness to incident Testimony about assailant	Presentencing report 36 months jail
Sexual Assault (Level I)	Victim Police 3 eyewitnesses	Statement of assault Police testimony Witnesses to incident	Presentencing report 42 months jail
Sexual Assault (Level I)	Victim 3 police Medical First person disclosed	Statement of assault Police testimony Police saw assault Medical report Testimony about assailant	15 months jail 24 months probation

Table 45 Profile of Cases Ending in Conviction (Cont'd)

Most Serious Charge	Number and Types of Witnesses	Types of Evidence	Final Outcomes
Sexual Assault (Level I)	Victim 2 police Corroborating witness	Statement of assault Police testimony Police saw assault Testimony about assailant	$500 fine
Sexual Assault (Level I)	Victim 2 police Eyewitness	Victim statement of assault Police testimony Witness to incident	$400 fine
Sexual Assault (Level I)	Victim 7 police Medical First person disclosed	Victim statement of assault Police testimony Police saw assault Medical report Testimony about assailant	Presentencing report 168 months jail
Sexual Assault (Level II)	Victim Police Medical Victim's friend	Victim statement of assault Police testimony Testimony about assailant Friend saw evidence	12 months jail
Sexual Assault (Level II)	Victim Police Medical First person disclosed	Victim statement of assault Police testimony Testimony about assailant Testimony about seeing evidence	72 months jail

Table 45 Profile of Cases Ending in Conviction (Cont'd)

Most Serious Charge	Number and Types of Witnesses	Types of Evidence	Final Outcomes
Sexual Assault (Level II)	Victim Police Medical Defendant's friend	Victim statement of assault Police testimony Medical report Witness to incident	48 months jail
Sexual Assault (Level II)	Victim 3 police Medical	Victim statement of assault Police testimony Police saw assault Medical report	18 months jail
Sexual Assault (Level II)	5 police	Police testimony Police saw assault	Presentencing report 36 months jail
Sexual Assault (Level II)	Victim 2 police Medical	Police testimony Medical report	12 months jail
Sexual Assault (Level II)	Victim 6 police	Victim statement of assault Police testimony Police saw assault	72 months jail
Sexual Assault (Level II)	Victim 2 police	Victim statement of assault Police testimony Police saw evidence	Presentencing report 36 months probation
Sexual Assault (Level II)	Victim 7 police Medical First person disclosed	Victim statement of assault Police testimony Medical report Testimony about assailant	48 months jail

Table 45 Profile of Cases Ending in Conviction (Cont'd)

Most Serious Charge	Number and Types of Witnesses	Types of Evidence	Final Outcomes
Sexual Assault (Level II)	2 victims 2 police	Victims' statements of assailant Police testimony Witnesses evidence	144 months jail
Aggravated Sexual assault (Level III)	Victim 2 police Medical First person disclosed	Statement of assault Police testimony Police saw assailant Medical report Testimony about assailant	Presentencing report 72 months jail

Table 46 presents a profile of the cases that did not end in conviction. Only one of the cases involving Level I sexual assault included a corroborating witness, while two cases included testimony by police who had witnessed the defendant physically assaulting the victim.

Two of the three cases involving Level II assaults included witnesses to incidents. Similarly, two of the three aggravated sexual assaults included police officers who had seen the defendant physically assaulting the victim. Both of these defendants were acquitted by juries.

Five of the cases involving Level I sexual assaults were dismissed either for lack of evidence or on technical grounds. Three cases were withdrawn by the crown due to a ack of evidence, while the final case ended in acquittal.

One of the Level II sexual assaults was transferred to family court by the judge. One case was withdrawn by the crown and one case ended in acquittal. One case involving aggravated sexual assault was dismissed because of lack of evidence. The other two cases ended in acquittals.

Table 46 Profile of Cases NOT Convicted

Most Serious Charge	Number and Types of Witnesses	Types of Evidence	Final Outcomes
Sexual Assault Level I	Victim 2 police Medical First person disclosed	Police testimony Medical report Testimony about assault and assailant	Acqui al
Sexual Assault Level I	2 police Corroborating witness Medical	Police testimony Testimony about assailant Medical report	Withdrawn
Sexual Assault Level I	Victim 4 police Victim's friend	Statement of assault Police testimony Police witnessed assault Testimony about assailant	Withdrawn
Sexual Assault Level I	Victim 6 police Medical	Statement of assault Police testimony Police witnessed assault Medical report	Withdrawn after jury unable to reach verdict
Sexual Assault Level I	None	None	Dismissed
Sexual Assault Level I	Victim 2 police Victim's friend	Statement of assault Police testimony Knowledge of defendant	Dismissed, lack of evidence
Sexual Assault Level I	Victim 2 police	Statement of assault Police testimony	Dismissed
Sexual Assault Level I	Victim	Statement of assault	Dismissed, lack of evidence

Table 46 Profile of Cases NOT Convicted (Cont'd)

Most Serious Charge	Number and Types of Witnesses	Types of Evidence	Final Outcomes
Sexual Assault Level I	Victim Police Victim's friend	Statement of assault Police testimony Testimony about victim	Dismissed
Sexual Assault Level II	Victim 3 police Eyewitness 2 medicals Expert	Statement of assault Police testimony Witness to assault Medical reports	Withdrawn
Sexual Assault Level II	Victim 4 police Medical First person disclosed Victim's friend Defendant's friend	Statement of assault Police testimony Police witnessed assault Medical report Testimony about assailant Testimony about defendant	Acquittal
Sexual Assault Level II	None	None	Case transferred to family court
Aggravated Sexual Assault - Level III	Victim 5 police	Statement of assault Police testimony	Dismissed
Aggravated Sexual Assault Level III	Victim 6 police 2 corroborating witnesses Medical	Statement of assault Police testimony Police witnessed assault Testimony about assailant Medical report	Acquittal
Aggravated Sexual Assault Level III	Victim 4 police Medical	Statement of assault Police testimony Police witnessed assault Medical report	Acquittal

The final dimension to be examined in this section is the relationships between offence and offender characteristics and final court outcomes. Table 47 presents those factors expected to be significantly related to the final court outcomes (i.e., convicted or not convicted).

Physical force was used on victims in thirty cases. Sixteen of these cases ended in convictions. In ten of the sixteen cases ending in conviction, the victim was also physically injured. Surprisingly, the incidence of physical injuries was not significantly related to conviction rates. Over one-half (53 per cent) of the cases where physical force was used on the victim ended in conviction. Similarly, 53 per cent of the cases where the victims were injured ended in conviction.

Turning to those cases where physical force was not used on the victim, the rate of conviction was marginally higher (60 per cent versus 53 per cent for cases where physical force was used). Similarly, the rate of conviction was slightly higher if there were no physical injuries to the victim (56 per cent versus 53 per cent for cases where the victim was physically injured).

The third factor expected to be significantly related to final court outcomes concerned whether or not a weapon had been used during the assault. There was no overall difference in the rates of conviction based on this factor.[19]

The fourth and fifth factors expected to be significantly related to final court outcomes concerned selected characteristics of the offender. We were surprised, however, to find that there was no significant relationships between the use of alcohol/drugs by the defendant and final court outcomes. More than one-half (56 per cent) of the cases where the assailant had used drugs or alcohol and 53 per cent of the cases where those substances had not been a factor ended in conviction.

Whether or not the assailant was previously known to the victim did have a bearing on the rate of conviction. The conviction rate was marginally higher if the defendant was previously known to the victim rather than being a stranger (59 per cent and 50 per cent, respectively).

The final factor we examined concerned the occurrence of other offences at the same time as the assault. Although, one-third of the cases where there were accompanying offences ended in conviction, a conviction was also obtained in 59 per cent of cases where there were no accompanying offences. Thus, the conviction rate was greater if there were no accompanying offences.

We asked crown counsel and defence lawyers what factors they perceived as critical to the final court outcomes in sexual assault trials. Eight of the nine crown

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[19] Of course, broken down by the police classification of the Time Two assault, the odds of conviction when a weapon is used increases dramatically for Level II assaults.

counsel believed that despite abrogation of the rules regarding recent complaint, the complainant's behaviour immediately after the assault was critical to the jury's perception of her credibility. While more than half of the crown counsel felt that abrogating these rules was one of the most significant differences between prosecuting cases under the old rape law and the new sexual assault provisions, it was noted that this kind of evidence is still introduced. Two of the five defence lawyers agreed, remarking that a lack of recent complaint is still damaging to the crown's case.

Table 47 Factors Significantly Related to Final Court Outcomes

	Convicted	Not Convicted	Totals
Physical Force Used on Victim			
Yes	16	14	30
No	3	2	5
TOTAL	19	16	35
Victim Physically Injured			
Yes	10	9	19
No	9	7	16
TOTAL	19	16	35
Use of a Weapon			
Yes	7	6	13
No	12	10	22
TOTAL	19	16	35
Assailant Use Drugs			
Yes	10	8	18
No	9	8	17
TOTAL	19	16	35
Relationship to Victim			
Yes	9	9	18
No	10	7	17
TOTAL	19	16	35
Other Offences			
Yes	2	4	6
No	17	12	29
TOTAL	19	16	35

Source: Unweighted police database

Seven of the nine crown counsel also believed that corroboration is still an important factor influencing outcomes. For example, they believe that evidence of physical injury to the complainant is an important aid to the prosecution. The majority (four of five) of defence lawyers perceived a lack of corroboration to be very damaging to the crown's case.

Six of the crown counsel believed that the prior sexual history and "moral character" of the complainant are still potentially important factors determining final outcomes. This was felt to be true despite the restrictions on the admissibility of this evidence brought about by Bill C-127. Four of the five defence lawyers agreed, noting that since 1983 they had successfully introduced evidence regarding complainants' prior sexual history and/or moral character during sexual assault trials.

The four judges interviewed indicated that none of the defence lawyers had attempted to introduce these types of evidence during trials in which they had presided since 1983. All four judges did believe, however, that under certain circumstances evidence of sexual activity should be admitted. Cited as examples of such circumstances were: (i) where a previous relationship between complainant and accused existed and previous allegations had been made; and (ii) where a woman had consented to have sex with several men in a particular situation and then refused the accused.

Six crown counsel argued that the perceptions of the judge and/or jury regarding the complainant's general moral character and background are influential in the final outcomes. As a result, crown counsel believed that convictions can be especially difficult to obtain if the complainant is a prostitute. Two crown counsel thought that the demeanour and credibility of the complainant as a witness are more influential in determining final outcomes than are the judge's or jury's perceptions regarding the complainant's moral character or background. Four other crown counsel perceived the complainant's demeanour and credibility as important factors, but no more influential than the complainant's moral character or background. Six crown counsel also remarked that a prior criminal record on the part of the complainant could seriously damage their case because it discredited the complainant's credibility.

Proof of penetration is no longer required under the sexual assault provisions. Four crown counsel remarked, however, that proof of penetration helps to corroborate the complaint, thus making a case much stronger.

Seven of the nine crown counsel and three of the five defence lawyers believed that the existence of a prior relationship between the complainant and accused is very influential in determining final outcomes. It was noted that a lack of consent is much more difficult to prove if a prior relationship existed. The defence lawyers noted that the absence of a prior relationship strengthened the crown's case.

3.4 Profile of Trials Observed

In this section we present the findings from the courtroom observations of sexual assault trials. While these data cannot be used to generalise to the entire population of sexual assault trials, they provide an excellent source of in-depth qualitative data that can be used to provide a context for the findings from the quantitative databases.

Throughout this section we present our findings regarding the nature of trials observed, the kinds of evidence presented and how the evidence was received. This section is organized on a case-by-case basis. Table 48, at the end of this section, summarises in tabular form the courtroom observations.

3.4.1 Trial Number One

This trial was held at County Court and was by judge and jury. The trial lasted five days. The accused, a 34 year old unemployed labourer, was charged with one count under section 246.1, one count under section 246.2 and one count under section 245. There were two complainants in this case. One of the complainants was a woman in her twenties, a prostitute at the time of the offence. The second complainant was a 15-year-old girl at the time of the offence (16 years old at the time of the trial), also a prostitute at the time of the offence. The accused had approached both of these complainants, on different occasions, and had expressed his interest in paying money for sexual acts.

Prior to the commencement of the trial, an order was made for a ban on the publication of the complainants' identities. An order was also made for the exclusion of witnesses from the courtroom.

Testifying for the crown were both complainants, three police officers, one doctor, a 'photo I.D. man', an acquaintance of the first complainant and a friend of the accused.

The first police officer testified that he had taken a statement from the first complainant. This officer stated that the complainant had identified the accused in a police line-up and that he had found a jacket in the apartment of the accused that matched the description of the assailant's jacket in the complainant's report.

The second police officer testified that he had been 'flagged down' by the second complainant who reported the assault to him. This officer testified that the complainant was dishevelled in appearance and seemed agitated. The officer also stated that the complainant had showed him the location where the assault had occurred, and that he had taken her to the hospital.

The third officer stated that the second complainant had picked someone out of the photo line-up, but had said that she wasn't positive about identifying that man as her

assailant. This officer went on to state that a photograph of the accused was not among those in the line-up.

The first complainant testified for 30 minutes. She began her testimony by stating that the accused had approached her saying that he "had one hundred dollars to spend." The complainant and the accused drove around the block and parked in an alleyway. At this point the accused had locked the car door, forced himself over the complainant and grabbed her breasts and genital area. The complainant testified that she had been unable to get out of the car and flee. One week later, the accused tried to "pick her up" again. The second complainant called the police and identified the accused.

The first complainant was cross-examined for one hour. The defence pointed to the complainant's past as a "known prostitute" with a "prior criminal record" and questioned the complainant about her failure to report the incident when it occurred. The defence also pointed to inconsistencies in her testimony at the trial from that at the preliminary hearing, and suggested that she had changed her story. The principal defence argument regarding the first complainant was that the incident had not occurred.

The second complainant's examination-in-chief lasted 25 minutes. The complainant stated that the accused had offered her fifty dollars for a "blow job." When they were in the alley and she was performing oral sex on him, the accused started to choke her and forced her to have genital intercourse. The accused then forced her to perform oral sex again and forced intercourse with her again.

Cross-examination of this witness lasted one hour. Again, the defence pointed to the complainant's past as a "known prostitute" with a "juvenile record". The defence suggested that the complainant had consented to the sexual acts and that the issue was one of not being paid enough, rather than rape. The defence also attempted to establish that the complainant was forced to lay charges and give the police a statement in exchange for the dropping of charges of solicitation. The defence also pointed to inconsistencies in the complainant's testimony: at the preliminary hearing, the complainant had stated that she had performed one act of oral sex and one act of intercourse, and at the trial she stated that it was two of each.

The next witness for the crown was a doctor from the sexual assault team at the Shaughnessy Hospital who had examined the second complainant when she arrived at the hospital immediately after the assault. This doctor testified that the complainant had been dishevelled and shaky but did not smell of alcohol. The doctor stated that her examination of the complainant revealed bruising on the neck, thigh and shoulder as well as trauma to the vaginal wall. The doctor emphasized that, in the "thousands" of examinations she had conducted, she had never seen such severe injury to a vaginal wall. The doctor also testified that, during her examination of the complainant, semen was found.

During cross-examination, the defence established that the doctor had not ordered testing for drug and alcohol content in the complainant's blood. In response to a defence query about why she did not make a note of the fact that the victim was a prostitute, the doctor responded that this information was irrelevant.

Another witness for the crown was a past roommate of the accused. This witness gave testimony about the jacket that had been identified by the first complainant and had been found in the apartment of the accused. This witness stated that he had "traded" jackets with the accused when they had been living together, and identified the jacket that the crown had marked for exhibit as the jacket that had been "traded". This witness also verified the type of car that the accused drove. The defence attempted to question this witness in cross-examination about his drinking habits, but the judge would not permit the questions.

An acquaintance of the first complainant testified that the complainant had told her about the assault and had identified the accused as the assailant. The defence called no witnesses and the accused did not testify.

In submissions, the crown emphasized that the fact that the complainants were prostitutes was irrelevant to the issue of "consent." The crown pointed to the complainants' credibility as witnesses and the supporting evidence. The defence identified "witness credibility" as a primary issue, and stated that these two complainants could not be believed because they led lives of "perpetual criminality and deceit." The defence also pointed to inconsistencies in their testimony.

In his instructions to the jury, the judge echoed the crown's claim that the complainants' engagement in prostitution was not relevant to the issue of "consent". The judge urged the jury to consider the credibility of witness testimony as well as the inconsistencies noted. The judge stated that, in his view, there was no evidence of collusion on the part of the police and witnesses and that the complainants had no motive to lie. The jury returned with a verdict of not guilty of one count under section 246.1, guilty of one count under section 245 and guilty of one count under section 246.2.

At sentencing, the crown argued for an incarceration period of five to six years, given to the extreme violence of the assault. The crown stressed that prostitutes needed to be protected from assaults like these and called attention to the psychological assessment of the accused, which had revealed a high level of rage against women. A presentence report on the accused was submitted to the judge that disclosed an extensive criminal record, including a conviction for assault causing bodily harm, and highlighted the fact that he had been on probation at the time of this incident.

The defence argued that the law had to give a clear message to prostitutes that they do not deserve the same protection as "good" women, and that a lengthy sentence for the accused would clearly reflect support of prostitution by the justice system. The

defence referred to incidents of this type as "occupational hazards", and appealed to the judge for a low sentence or a probationary period with an order for treatment. The judge sentenced the accused to five years in jail with a reduction for the time already served while waiting for his trial. The judge stated that he was very disturbed by the violence of the assault as well as by the psychological assessment of the accused. The judge also stressed that the law was concerned with the protection of all women from this type of assault, including prostitutes.

3.4.2 Trial Number Two

This trial was held at County Court and was by judge and jury. The trial lasted four days. The accused, a 31 year old construction worker and father of two, was charged with one count under section 246.1. The complainant was a 22-year old single woman, employed as a maintenance worker. The accused was a stranger to the complainant. Prior to the commencement of the trial, a motion was made for a ban on the publication of the complainant's identity. This motion was granted.

Witnesses for the crown included five police officers and the complainant. The first two officers testified that they had pursued the accused through the park on the night of the alleged assault and that, when the accused ran from them, they had subdued him with a police dog. One officer testified that the accused had been read his rights prior to giving his statement to the police. This same police officer had interviewed the accused and had taken down the statement that he had dictated. Another officer testified that he was present during the interview and that he had also pursued the accused in a police car on the night of the alleged assault. The police officer confirmed that the accused had been identified in a police line-up. A fifth officer testified that he had taken daylight photographs of the scene of the crime.

A voir dire was held to determine the admissibility of the accused's statement to the police. According to the defence lawyer, the accused had not responded verbally when asked if he understood his rights (i.e., 'section 10' warning) and, in the opinion of the defence lawyer, did not understand them. He further argued that the accused was illiterate and would not have understood the statement that he had signed. The defence suggested that the police had coerced the accused into signing the statement by promising him that, if he signed, he would be released. The judge ruled that the accused's statement was admissible as evidence, and stated that he was satisfied that the accused had been given his rights and that he had understood them.

In his statement, the accused said that he thought the complainant was a 'hooker', and that even when he realized that this was not the case, he thought that he could get away with the assault anyway. The accused stated that he had told the complainant that he was a rapist and had grabbed her. When she resisted and started to scream, he ran away and was subsequently caught by the dog.

The complainant's examination-in-chief lasted one hour and fifty minutes. The complainant testified that she had been walking home around 5 a.m. when she was approached by the accused. She testified that he told her he was a rapist, grabbed her by the arm, covered her mouth and tried to drag her up a few stairs. The complainant stated that she grabbed the accused by the testicles and screamed. At this point in the attack a passer-by came to the complainant's assistance and she was able to flee. The complainant testified that, following the incident, she had suffered pain as a result of a sore neck and that she had a red mark on her face.

Cross-examination of the complainant lasted 45 minutes. The defence did not attempt to question the complainant about her past sexual history. He attempted to discredit her story by suggesting that she had been drunk at the time of the alleged incident since she was on her way home from a party. The defence suggested that the complainant had encouraged the accused by talking to him.

Testifying for the defence were the accused, his wife and stepfather, and two friends. The accused, who had only achieved a grade seven level of education and could not read or write, said that, on the night of the alleged assault, he had been returning home from a bar after having "a few beers." After meeting and speaking to the complainant on the street, he told her that he was a rapist and put his arms around her. The accused stated that the complainant hit him and screamed. He noted that at this point he tried to run away.

During the cross-examination of the accused, the crown tried to establish that the accused had, in fact, planned to rape the complainant. The crown also pointed to earlier inconsistencies in the accused's testimony at the preliminary hearing.

The accused's wife and stepfather testified as to the accused's learning disabilities. The two friends of the accused who testified for the defence gave testimony about his presence in the bar on the night of the alleged assault, how much alcohol they had seen him consume and what time he had left the bar.

During submissions, the crown argued that the accused had intended to commit rape and that his behaviour was not due to alcohol consumption. The crown pointed to the credibility of the complainant's testimony, on her terror and vulnerability on the night of the attack and on the force that had been used by the accused.

In his submission to the court, the defence emphasized the unstable background of the accused (i.e., that he had learning disabilities and was illiterate). The defence also claimed that the statement presented as evidence had not been given by the accused but had been prepared by the police. The defence concluded that there was no evidence of sexual assault and that the jury could consider the incident as one of "common assault."

During his instructions to the jury, the judge defined "sexual assault" as the intentional application of force without consent and with sexual intent or overtones. The judge commented on the good reputation of the complainant and on her frank and honest testimony.

At sentencing, the crown asked the judge to consider the vulnerability and innocence of the complainant as well as the potential for serious harm represented by this incident. The crown also asked for a sentence that reflected the need for protection of the public and for general deterrence.

At sentencing the defence appealed for leniency given that the accused had a family, that the accused was drunk at the time and that he had no previous record involving a violent offence. (The accused had a prior criminal record for dangerous driving and possession of stolen property.)

The jury found the accused guilty as charged. The accused was sentenced to six months in jail. During sentencing, the judge called the accused's conduct cowardly and commented on his lack of remorse.

3.4.3 Trial Number Three

This trial was held at County Court and was by judge and jury. The trial lasted four days. The accused, a 25-year-old Caucasian male, was charged with one count under section 246.2. The complainant was a 23-year-old prostitute. The accused had been one of the complainant's "clients." At the start of the trial, a ban was ordered on the publication of the complainant's identity. An order was also made for the exclusion of witnesses from the courtroom.

Witnesses for the crown included the complainant, five police officers (including a police forensic specialist) and a witness from the scene of the assault. The first police officer testified that, while driving, he had heard the complainant screaming and had gone to her assistance. This officer testified that the complainant had been nude and covered with blood and that his subsequent efforts to find the assailant were unsuccessful.

The second police officer corroborated the first officer's statement concerning the condition of the complainant at the time of the assault. In addition, the second officer testified that the jacket and shoes belonging to the accused had contained grains of sand that matched the type of sand located at the scene of the assault. (Apparently, this type of sand is not found elsewhere in the city.) This officer testified that the accused had been sweating profusely when apprehended.

A third officer also testified that he had picked up the accused in the sweaty condition described above. According to the police officer, the accused had smelled of

perfume that matched the perfume on the jacket found at the scene of the assault. A fourth police officer testified that he had conducted the police identification line-up and that he had taken photographs of the victim's injuries.

The last officer, a police forensic specialist, testified that he had analyzed some blood that had been found on the accused's shoes. This officer testified that the blood found on the accused's shoes matched the complainant's blood type (O positive). This officer went on to state that this blood type occurred in approximately 24 out of 1000 people.

The medical evidence presented in this case was submitted through a letter from the complainant's doctor, in which the doctor detailed the complainant's injuries. These injuries had included a broken jaw and bruising of the eyes, nose and cheeks. This letter also identified the complainant's blood type as O positive.

The complainant's examination-in-chief lasted 30 minutes. She testified that the accused had approached her for sex, prepared to pay her fifteen dollars in cash and a gold chain. The complainant and the accused then proceeded to an alleyway where the accused told the complainant that the cash he had offered to her was in coins. The complainant testified that when she refused to take the payment in coins the accused began to beat her severely in the face and upper body.

The complainant testified that when she began screaming the accused choked her until she almost fainted. Throughout this beating the accused threatened to kill the complainant if she didn't stop screaming.

The accused then forced the complainant to undress and to take a position on her knees. He inserted his fingers into the complainant's anus and vagina and forced her to perform oral sex. While being forced to perform oral sex on the accused, the complainant heard a car door slam and she once again began to scream. The complainant testified that the accused tried to grab her but she managed to escape and run away.

Cross-examination of the complainant lasted 40 minutes. The focus of the defence arguments during cross-examination was "mistaken identity". The complainant had testified at the preliminary hearing that the assailant had sandy coloured hair and blue eyes. At the trial the complainant withdrew this description and stated instead that she was unsure about these details. (The accused had brown eyes and brown hair.)

The defence charged that the complainant had heard, through an acquaintance (a witness for the defence), that the accused (who was incarcerated at the same location as this woman's son) had brown hair and brown eyes, and that the complainant had changed her testimony to try and match this description. The defence did not attempt to question the complainant about her past sexual history.

The final witness for the prosecution was a prostitute who was working nearby at the time of the incident. This witness testified that she had heard the complainant screaming and when she had approached the scene of the assault had found the complainant naked and bleeding. This witness also testified that the man she had seen running away had sandy-coloured hair.

Witnesses for the defence included the accused and several people who had been in a bar on the night of the alleged incident. The accused testified that he had been drinking all day with a friend and had gone to a bar before midnight with the same friend. The accused testified that a fight had occurred in the bar that had caused a lot of blood to be "everywhere." According to the accused, a woman had cut herself while breaking a beer bottle over someone's head, which the accused claimed accounted for the blood on his shoes. During cross-examination of the accused, the crown questioned him about why he had been sweating profusely and had been running in the opposite direction from his home when apprehended by the police.

One of the friends of the accused testified that he and the accused had been drinking all day and that the accused had left his apartment at about three a.m.. This witness had no recollection of the jacket allegedly belonging to the accused and testified that he was certain that the accused had lost his gold chain in the bar room fight.

Four other witnesses corroborated that the accused had been involved in a bar fight. Two of these witnesses also claimed that the accused had lost his chain in the bar fight. One of these witnesses testified that he had never seen the jacket that had been entered as an exhibit. Another witness testified that the accused had six "highballs" in less than two hours. Another witness testified that there was, indeed, blood "everywhere" in the bar on the night of the fight. One further witness testified that he had only seen the accused bleeding. All of these defence witnesses were cross-examined by the crown on the amounts of alcohol they had consumed on the night of the incident.

The seventh witness for the defence testified that she had cut her hand while breaking a beer bottle over someone's head. This witness testified that her blood had dripped on the accused when he had held her hand to look at the cut. This witness went on to claim that her blood type was O positive.

A voir dire was held to determine if the crown could request that this witness's blood be tested to determine if her blood type was, in fact, O positive and if this test would be allowed as evidence in the case. The defence argued that the test results would be inconclusive. The judge granted the crown permission to both ask for the witness's consent to have her blood tested and to have the results of the test entered as evidence. The witness consented to have her blood tested. The results of this test proved that she did not have an O positive blood type.

A final witness to testify for the defence was a friend of the complainant. This witness testified that the complainant had told her, after the assault, that the assailant

had blond hair and blue eyes. She further testified that her son (who was incarcerated at the same location as the accused) had told his mother that the accused had brown eyes and brown hair, and that "the wrong man had been identified." In the opinion of this witness, it was the awareness of this information that had caused the complainant to alter her testimony about the physical description of the accused. This witness also testified that the complainant had requested her to ask her son to beat up the accused. The witness stated that she had refused the complainant's request.

During his closing argument, the crown emphasized that guilt had been proved beyond a reasonable doubt and that the accused was unable to account for his whereabouts at the time of the assault. The crown also pointed to the fact that when the accused was apprehended, he had fresh cuts on his hands that were inconsistent with his having received these injuries in a bar fight several hours earlier.

In his summation, the defence emphasized the inconsistencies present in the description of the accused, and his client's position that he had sustained the cuts to his hands in the bar fight. The defence also pointed to the unfair procedures used in the police line-up (i.e., that the accused who was the shortest man in the line-up had been placed in the middle of the row).

In his instructions to the jury, the judge focused on the credibility of all witness testimony. The judge also advised the jury that the complainant's background as a prostitute should not affect their decision, and stated that prostitutes are entitled to the same protection under the law as everyone else.

The jury returned with a verdict of guilty of one count under section 246.2. At sentencing, the crown requested a period of incarceration of four to five years and emphasized the brutality of the assault. The defence called for a probationary period accompanied by a fine, and emphasized that the accused had no criminal record for sexual assault or any other violent crime. The judge sentenced the accused to three years in jail and commented on the extremely violent nature of the assault and the importance of protecting the public from this kind of behaviour.

3.3.4 Trial Number Four

This trial was held at County Court and was by judge and jury. The trial lasted five days. The accused, a 38 year old unemployed truck driver, was charged with three counts under section 246.1. Three female complainants, aged 17, 21 and 19 were allegedly assaulted by the accused on three different occasions. The first two complainants (i.e., the 17 year old and the 21 year old) were strangers to the accused. The third complainant (i.e., the 19 year old) had had a drink with the accused prior to the alleged incident. The 17-year-old and the 19-year-old complainants had worked in the past as prostitutes.

Prior to the commencement of the trial, a ban was ordered on the publication of the complainants' identities. An order was also made for the exclusion of witnesses from the courtroom.

During the trial, the defence made three motions for a mistrial due to the fact that one of the jurors knew one of the complainants. This juror was removed from the jury and was not replaced. The motion for a mistrial was denied.

Six witnesses for the crown gave testimony pertaining to the alleged assault of the first and youngest complainant. These witnesses included two police officers, one doctor, a forensic analyst, a worker from a half-way house (this complainant resided at a half-way house) and the complainant.

The first police officer who investigated the report, testified that the complainant was very upset, bad been crying, and had difficulty giving a coherent account of what had happened. Although the officer drove the complainant around the neighbourhood to try to locate the parking lot where the assault had occurred, the complainant was unable to identify the location of the alleged incident. The officer testified that she suspected that the complainant was on drugs and warned her about public mischief charges.

The second police officer who testified in regard to the alleged incident was a detective from the sexual assault squad. The officer testified that the complainant had identified the accused in a police line-up and that she had been shaking and crying at the time.

A doctor from the Shaughnessy Hospital's sexual assault assessment project team testified that she had examined the complainant. The doctor testified that the complainant was very upset but co-operative during her examination, and that she did not think that the complainant was under the influence of drugs or alcohol. The injuries that the doctor found upon examination of the complainant included a scrape on one breast and bruising on one upper arm.

During cross-examination of the doctor, the defence asked, "how long do sperm stay alive?" The doctor responded that sperm survive in the vagina for only a short while, but could survive up to two or three days in the cervix. A forensic analyst testified that no sperm had been found in the samples collected at the hospital from the complainant.

A worker from the half-way house testified that when the complainant arrived at the home after the alleged assault, she was crying and appeared to be very upset. This witness testified that he had difficulty understanding the complainant when she tried to talk to him. She also testified that he called the police and that, a little while later, the accused arrived at the half-way house and asked for the complainant. The house worker

said that he told the accused that the complainant was grounded and when the accused was driving away, the house worker took down the accused's license plate number.

During cross-examination, this witness was asked by the defence if he generally thought that the complainant was "truthful." The witness answered this question by saying that he would "take anything she said with a large grain of salt."

The complainant's examination-in-chief lasted 30 minutes. The complainant testified that the accused had picked her up when she was hitchhiking. She testified that the accused offered her some coffee and stopped to purchase it and some cigarettes. The complainant stated that the accused then drove to a parking lot, locked all the doors and forced her to have sexual intercourse with him in the passenger seat of the car. The accused then drove the complainant to the half-way house and let her out. For some reason the accused returned to the half-way house a little while later and asked for the complainant.

During the 40-minute cross-examination of the complainant, the defence pointed to inconsistencies in the complainant's testimony between the preliminary hearing and the trial. For example, the complainant had identified two different locations for the scene of the incident. And, at the preliminary hearing, the complainant had testified that she had been "passive" during the assault whereas at the trial she stated that she had told the accused "to stop." The defence attempted to discredit the complainant's testimony by establishing that she had used cocaine and heroin and that she had a criminal record for theft. The main argument of the defence, relating to the complainant, was that no assault had occurred.

Four crown witnesses gave evidence about the second alleged assault. These witnesses included a police officer, a doctor, a forensic analyst and the second complainant.

The police officer testified that the complainant (aged 21) gave him a written statement and he then drove her to the hospital for an examination. The doctor who examined the second complainant at the hospital testified that the complainant was tense and angry at the time of the examination. This doctor stated that there was bruising on the complainant's kneecap, shin and ankle as well as five bruises on her upper arm, an injury that seemed consistent with "a hand grabbing the arm roughly."

The forensic analyst testified that sperm had been found in the samples taken from the complainant at the hospital. This witness stated that he could not be sure if the sperm found in these samples was from the complainant's vagina or cervix.

The testimony-in-chief for the second complainant lasted 50 minutes. The complainant testified that while hitchhiking at a bus stop, the accused picked her up as well as a man who was also standing at the bus stop. After the man had been dropped off, the accused proceeded to drive the complainant home. The complainant testified

that the accused suddenly changed directions and drove to a park. He then parked the car and forced the complainant to masturbate him, threatening to hurt her if she didn't cooperate. The accused then forced the complainant to have intercourse with him in the passenger seat of the car.

The complainant testified that the accused let her out of the car briefly so that she could urinate but that she did not try to flee because it was too dark and because she was fearful of the threats that the accused had made.

The complainant testified that the accused then forced her back into the car and then drove to a nearby alleyway where he forced her to have intercourse again. Following this, the accused offered the complainant twenty dollars (which she said she refused) and let her out of the car.

The defence cross-examined this witness for an hour and a half. The defence pointed to inconsistencies between the testimonies that the complainant had given at the preliminary hearing and the trial and her police statement. The defence focused on the fact that the complainant had not mentioned at the preliminary hearing that the accused had forced her to masturbate him. As well, the defence pointed to the fact that, in her statement to the police, the complainant failed to mention that she had been hitchhiking and that a man at the bus stop had also been picked up by the accused. When pressed about these inconsistencies, the complainant conceded that her preliminary hearing testimony and her statement to the police were "half true." The defence also attempted to discredit the complainant by suggesting that she could have tried to escape into the park when she had an opportunity.

The defence also pressed the complainant to give details about what she was wearing the night of the alleged incident (e.g., was she wearing tight pants and high heels?). The main line of defence regarding this alleged assault was that the complainant was a prostitute and that the sexual acts were consensual.

Crown testimony regarding the third alleged assault was provided by the third complainant, a police officer, a doctor and a forensic analyst. The police officer testified that when he first saw the complainant, she was crying and agitated. This officer called for an ambulance that took her to the Shaughnessy Hospital.

The doctor who examined the complainant at the hospital testified that he smelled alcohol on her breath but that he did not think that she was drunk. This doctor also testified that she did not find any evidence of injuries to the complainant, but did give the complainant a "morning-after pill" and some antibiotics. The forensic analyst testified that sperm had been found in the samples taken from the complainant at the hospital.

The examination-in-chief of the third complainant lasted 45 minutes. This complainant testified that, while hitchhiking, the accused picked her up and they decided

to go for a drink together at a bar. The complainant testified that after two drinks they left the bar and the accused said that he would drive the complainant home.

The complainant testified that instead of driving her home, the accused parked the car under a bridge, locked the doors and forced intercourse with her in the passenger seat. The complainant testified that she tried to get out of the car but couldn't since the doors were locked. She also stated that she cried and told the accused to stop and that he told her to "shut up". The complainant testified that the accused punched and slapped her around her thighs while trying to force intercourse. She also testified that, when the accused let her out of the car and drove away, she walked to the nearest intersection and hailed down a police officer.

This complainant was cross-examined by the defence for one hour. The defence pointed to inconsistencies in the complainant's testimony at the preliminary hearing and at the trial in regards to the times stated for when the assault occurred. The defence also established that the complainant had estimated different and conflicting time frames for when her cocaine habit had started.

The defence attempted to discredit the complainant's testimony further by pointing out her history of drug and alcohol abuse and current enrolment in a drug rehabilitation program. The defence raised questions about the complainant's past history as a prostitute and argued that the sexual intercourse with the accused was consensual.

The crown introduced the accused's statement to the police as evidence. In this statement the accused denied having sexually assaulted anyone and denied any knowledge of the bar where the third complainant said she was taken. The crown also noted that the accused had waived his right to a lawyer and that it was written in the statement that the accused had said to the police that he "didn't need one." The defence did not object to the accused's statement being entered as evidence by the crown.

The accused was the only witness for the defence. The accused testified that the first complainant had flagged him down and had asked him to drive her home. The accused stated that he then drove the complainant to a store where she could buy some cigarettes and coffee, before driving her to the half-way house. The accused stated that the complainant invited him in for coffee at the half-way house but told him to wait a few minutes in the car. He said that after waiting, he went to ask for the complainant. When he was told that the complainant was grounded, he drove away.

In his account of the second alleged assault, the accused testified that the second complainant was hitchhiking, and that when he picked her up she told him she was going to work. When he asked her if she was a prostitute she replied in the affirmative noting that she charged sixty dollars for sex. The accused testified that he told the complainant that he was a married man and was not interested in having sex with her.

The accused then testified that, a few weeks later, he picked up the second complainant once again, but this time, after a few drinks, he was interested in having sex with her. Informed once again that she charged sixty dollars for sex, the accused told the complainant that he only had "hundred dollar bills." According to the accused, the complainant said that he could have "sex first and get change later."

The accused said that after trying, unsuccessfully, to get change for his hundred dollar bill at a corner store, the complainant told him to take her to a location where she could get change from a friend. When the complainant did not return to the car, the accused left without paying her. He went on to state that when he saw the complainant a few days later in a bar, she was with a man who approached him, demanding that he pay the money he owed. The accused said that he punched this man and left the bar. He testified that, when he next saw the complainant, he tried to pay her. However, when she saw him she told him to "get away" from her.

The accused further testified that it would have been impossible for him to tightly grab anyone's arm since he had crushed one of his fingers earlier that year. The accused testified that he had also picked up the third complainant while she was hitchhiking, and that she had accepted his invitation to go with him to a bar for a drink. The accused told the court that he and the complainant had about six drinks each at the first bar and that she suggested that they go to another bar. While driving to the next bar, the accused stopped the car to urinate, and when he got back into the car he made a pass at the complainant to which she was receptive, and they had intercourse in the front seat of the car.

The accused testified that when he told the complainant that he was ready "to call it a night," the complainant became angry and demanded eighty dollars. The accused testified that he told the complainant that she hadn't said anything about money earlier and he wasn't going to pay. At this point, the complainant told the accused that he was "in big trouble" and got out of the car.

During cross-examination of the accused, the crown asked him why, since he was having so much trouble with prostitutes, he didn't mention these incidents to the police when he was arrested. The accused answered this question by stating that he was not familiar with the charges until the preliminary hearing.

The accused also testified about his criminal record for indecent assault by stating that one night he had come home late at night drunk and had fallen into bed. Thinking that he was sleeping beside his girlfriend, the accused began to fondle the breasts of the person in the bed with him. The person in the bed with him, however, was not his girlfriend but a 14-year-old girl, who was a neighbor. The accused testified that he pleaded guilty to the charge of indecent assault. The crown attempted to pursue questioning of the accused about this incident but the judge did not permit it.

In her submissions, the crown counsel pointed to the credibility of the complainants' testimony and to the distraught demeanour of the first and third complainants both at the time of the incident and at the trial. The crown argued that the accused had established a pattern of picking up women who looked to him like prostitutes and forcing them to have intercourse in his car. She also pointed to the unlikelihood of a prostitute not using birth control (i.e., the third complainant had been given a "morning-after pill" at the hospital).

The defence argued, in his submissions, that the testimonies of all three complainants had been riddled with inconsistencies. In particular, the defence pointed to the admission by the second complainant that her testimony and police statement were only "half true." The defence noted the implausibility of a rapist escorting his victim home (as in the case of the first complainant). He also suggested that the second complainant did not try to escape from the accused in the park when it would have been "natural to do so," and emphasized that the demeanour of the second complainant was "void of emotion." The defence pointed to the lack of medical evidence to corroborate the testimony of the third complainant that she had been "slapped" or "punched" by the accused. He also stated that, in the case of the second and third complainants, the presence of sperm in the forensic samples was not conclusive evidence since the issue in these two cases was consent.

In his instructions to the jury, the judge spoke about the credibility of witness testimony and the demeanour of the witnesses. The judge reminded the jury that even if these women were prostitutes that they were entitled to protection under the law. The judge advised the jury that "honest belief" in consent applied to the second and third complainants. The judge defined "sexual assault" as any assault for the purpose of sexual gratification or of a sexual nature.

The judge told the jury that, in cases such as this one (cases involving "similar fact evidence"), the onus was on the jury to establish if a plan was involved that would negate consent. The jury returned with a verdict of not guilty on the first two counts under section 246.1 and guilty on the third count under section 246.1. (The accused was found guilty of assaulting the 19 year old woman who was the third complainant.)

At sentencing, the crown recommended a three- to five- year jail term for the accused, noting the accused's premeditation in planning the assault. The crown also emphasized that the accused had used confinement and had caused long-term psychological damage to the third complainant. The crown made reference to case law where similar acts had resulted in the convicted person serving time in a federal prison.

A presentence report was introduced for the accused. This report revealed that the accused had a grade 10 education, a good work record and a serious drinking problem that had recently caused a breakdown in his marriage. The defence argued that there was insufficient evidence to support the accusations of premeditation and confinement and noted that the accused had already spent eight months in custody.

The judge sentenced the accused to two years less a day with an order for alcohol counselling. The judge recognized the eight months already served by the accused that was doubled to sixteen months.

The judge described sexual assault as "violent and repugnant" noting that, regardless of the degree of physical harm, the trauma to the victim is serious. The judge stated that he did not doubt that the third complainant was still experiencing emotional trauma.

3.3.5 Trial Number Five

This trial was at Provincial Court and was by judge alone. The trial lasted one day. The accused, a 26-year-old male stripper was charged with one count under section 246.1. The complainant was a 30-year-old female musician. Although both the accused and the complainant were employed by the same nightclub, they were not acquaintances.

At the beginning of the trial, an order was made for the exclusion of witnesses from the courtroom. The defence put forward a motion for dismissal on the grounds that a delay of justice had occurred because two years had lapsed since the charges were laid. This motion was denied.

One police officer, the complainant and a friend of the complainant testified for the crown. The police officer testified that the complainant had been sitting with her friend, in the nightclub where she worked, when a strip performance by the accused began. During his performance, the accused approached the complainant and handcuffed his wrist to hers. The accused then pulled the complainant up onto the stage by her wrist while she was still in her chair. The complainant was then pulled out of her chair and the accused proceeded to hoist his leg over their handcuffed wrists and rub both his arm and the complainant's arm over his genital area. The police officer testified that he had seen the welts and bruises on the complainant's wrists that had been caused by the incident.

When the accused was questioned by the police officer, he said that the complainant had "gone along" with the performance, and that as soon as he had noticed any sign of the complainant resisting participation, he had let her go. The accused also told the officer that when he had tried to apologise to the complainant after the performance she had "acted like a bitch."

The next witness for the crown was the complainant's friend who had been sitting at the same table with the complainant at the time of the incident. This witness described the incident in the same way as the police officer had but added that she had overheard the accused say that the complainant was either "on a power trip or a lesbian." During cross-examination of this witness, the defence tried to suggest that her

friend (the complainant) had actually enjoyed her participation in the performance. The witness denied this suggestion.

The complainant's examination-in-chief lasted 20 minutes. The complainant testified that during his performance the accused handcuffed her wrist to his and dragged her, while she was still in her chair, up onto the stage. The accused then forcefully pulled her out of her chair, put his leg over their wrists and started to rub their arms over his genital area.

During cross-examination, the defence suggested that the complainant actually enjoyed strip performances. The defence also suggested that the complainant might have been mistaken as to the identity of the accused. The complainant denied both of these suggestions. This cross-examination lasted 15 minutes.

There were two witnesses for the defence, the accused and the manager of the nightclub where the incident had occurred. The accused began his testimony by stating that he had performed his handcuff act on many occasions prior to the night of the incident. He testified that during his performance on the night in question, he made eye contact with the complainant and thought that she was enjoying the performance. The accused stated that the complainant had extended her hand, allowing her wrist to be handcuffed, which he had taken as a sign that she was interested in participating in the performance. The accused also testified that it was only his arm that had rubbed against his genital area and not the complainant's. The accused stated that, as soon as he saw the complainant's resistance to participating in the performance, he let her go.

During cross-examination of the accused, the crown asked him if he knew that audience participation in strip performances was illegal. When the accused testified that he did know this, the crown asked him why he had told the police officer that he was unaware of this. The crown then suggested that the complainant had been forced to complain at least twice to the accused before he let her go. The accused denied this suggestion.

The next witness for the defence was the manager of the nightclub where the incident had occurred. This witness testified that the complainant appeared to be "going along with the show." The manager testified that as soon as he saw the complainant display signs of resistance to participating in the performance, he called to the accused to release her, which he did. The nightclub manager also stated that audience participation in strip performances was only illegal if the performer was naked. This witness went on to tell the court that when the complainant raised the incident with him the next day, he gave her two hundred dollars and two free nights accommodation in the hotel.

In his submission to the judge, the defence attacked the credibility of the complainant while supporting that of the accused. The defence stated that the accused had "honestly believed" that the complainant had consented to her participation in the

performance. The defence also stated that the accused had not made any lewd suggestions or threats to the complainant and there was no motive involving sexual gratification. As well, the defence pointed to his client's remorse over the incident.

The judge found the accused guilty of one count under section 246.1. The judge stated that the complainant had been forced to participate in a performance that was full of sexual overtones. He also stated that he believed that the accused had, in fact, known that the complainant was resisting participation in the performance but chose to ignore this because he wanted to show his dominance over her. The judge noted that the nightclub manager would not have tried to pay damages to the complainant if they were not at fault.

The crown called for a probationary period of one year and a fine of one thousand dollars. The crown emphasized that the incident, while not being extremely serious, had involved force and had shown a disregard for women.

A presentencing report was introduced that established that the accused had no criminal record, The defence emphasized this and pointed to the fact that the incident was not violent and that the accused was remorseful.

The judge pronounced a sentence of five days in jail with a fine of five hundred dollars. At sentencing, the judge focused on the extreme disrespect that the accused had shown for women in general and for this woman in particular. The judge once again stated his belief that the complainant had not wanted to participate in the performance, but had been forced to do so.

3.3.6 Trial Number Six

This trial was held at County Court and was by judge and jury. The trial lasted three days. Our field worker also attended the preliminary hearing for this trial, which had occurred five months earlier. The accused, a 35-year-old unemployed sales representative, was married and the father of two children. He was charged with one count under section 246.1. The complainant was a 41-year-old woman employed as an office administrator. The complainant and the accused had dated prior to the alleged assault. A pretrial order was made for a ban on the publication of the complainant's identity.

Witnesses for the crown included the complainant, a friend of the complainant, the investigating police officer, a police photographer, a doctor and a forensic analyst. The first witness was the investigating officer, who testified that the complainant reported that the accused had arrived at her apartment at 5:00 a.m., and had requested entry so he could "spend the night" with her. The complainant told the officer that she had refused this request, but had permitted the accused to come into her apartment to use the washroom. When the accused came out of the washroom, he proceeded into the

bedroom. When the complainant followed the accused into the bedroom to ask him what he was doing, he grabbed her, threw her down onto the bed, pinned her down, and then tried to force open her legs. The complainant told the police that she had wrestled with the accused for approximately 40 minutes before he succeeded in penetrating her.

The officer testified that, when he interviewed the complainant (three hours after the alleged assault), she had very swollen and red eyes from crying. The officer also testified that the complainant had signs of bruising on her arms, wrists and ankles.

The next witness was a police photographer, who testified that he had taken pictures of the complainant's injuries on the morning after the assault. (These photographs were shown to the jury.) The photographer also gave his opinion that the photographs did not accurately capture the extent of discolouration that he had seen on the complainant's limbs.

A doctor from the Shaughnessy Hospital had examined the complainant and testified that she found bruising around the complainant's armpits, on her lower arms and on one thigh. The doctor also testified that she had found evidence of bruising and broken blood vessels in the complainant's vagina, and said that this type of injury was consistent with the type of injuries that could be expected from repeated attempts at penetration.

During cross-examination, the defence questioned the doctor about the negative results of the sperm slide tests done on the samples taken from the complainant. In response to a query by the defence lawyer, on the percentage of negative results that occur in tests of this sort, the doctor responded that the five per cent of such tests have negative outcomes.

The next witness was a forensic analyst who testified that tests for traces of sperm on the bed clothes and face cloth from the complainant's apartment had not produced positive results.

The next witness who testified was a friend of the complainant. This woman testified that the complainant had called her after the assault, and that she had advised the complainant to report the assault to the police. This witness stated that she and the complainant had gone out together on several occasions in the past. This witness told the court that she was not in the habit of frequenting bars.

During cross-examination, this witness was questioned about the locations she frequented when she went out. The defence tried to establish that this woman was in the habit of going out to bars, of picking up men and of dating married men. The witness denied these allegations.

The complainant's examination-in-chief lasted one hour and forty-five minutes. The complainant testified that she had a prior sexual relationship with the accused. She

said that on the night of the incident she had permitted the accused to come into her apartment only so that he could use the washroom, and stated that she had refused the accused's request to "spend the night" with her. The complainant testified that when the accused came out of the washroom, he went directly into the bedroom. She then followed the accused and said, "what the hell do you think you're doing?"

The complainant testified that the accused grabbed her and threw her on the bed where she and the accused wrestled for approximately 40 minutes before he succeeded in partially penetrating her, ejaculating on her thigh. The complainant testified that she then went into the bathroom where she sat for 15 minutes. The complainant also stated that while she was in the bathroom she threw some tissue (that was on a counter) into the toilet.

The complainant testified that, following this, she took some valium and rested on the couch. She stated that she felt very shaky and called her friend who advised her to call the police.

During cross-examination, the defence questioned the complainant about her past sexual activities with men other than the accused and also questioned her about her delay in reporting the assault to the police. The judge permitted the defence to pursue these lines of questioning. No disclosure of the intent to introduce evidence of past sexual history with persons other than the accused was made by the defence prior to this line of questioning. Throughout the trial, the defence referred to the complainant in a disparaging manner using the phrase "that woman" when discussing the complainant with other witnesses.

During cross-examination, the defence established that the complainant and the accused had had a sexual relationship prior to the night of the alleged assault. The defence emphasized that the complainant had performed sexual acts with the accused not only in the bedroom of her apartment but also on the couch and on the living room floor.

The defence was able to establish that the complainant "enjoyed oral sex" and that she had "enjoyed oral sex" with men other than the accused. The defence was also permitted to establish that the complainant frequented bars where she picked up men and took them back to her apartment to have sex. The defence questioned the complainant about whether or not she dated married men and succeeded in establishing that the complainant was in the "habit of picking up married men."

The defence questioned the complainant about her use of marijuana and her "unstable" employment history. He also questioned the complainant about her "delay" in reporting the alleged assault to the police. (The complainant had waited over three hours before calling the police.) As well, the complainant was questioned about what the defence lawyer perceived as inconsistencies in her testimony from the preliminary hearing, her statement to the police and her trial testimony. For example, in her police

statement it was written that on the night of the alleged incident the accused had forced her to have "intercourse" (the defence was equating "full" penetration with "intercourse") whereas in her trial testimony the complainant had stated that the accused had only succeeded in "partially" penetrating her. The complainant explained this apparent discrepancy by telling the court that when she had given her statement to the police, they had not pressed her to give exact details about the assault nor had they asked her to provide a description of the "degree" (i.e., full or partial) of penetration that the accused had succeeded in forcing upon her.

When the complainant was questioned about why no evidence of sperm was found in the samples collected by the forensic examination at the hospital, she stated that she didn't find this surprising since she had gone to the washroom after the assault and used a douche. Upon hearing the complainant's response to this question, the defence suggested that she was continually changing her story, and emphasized that she had not told the police that she had douched nor had she made any reference to douching in her preliminary hearing testimony. The complainant was cross-examined by the defence for one hour and 10 minutes.

Witnesses for the defence included the accused, the accused's brother and the owner of a bar where the complainant and the accused had been seen together. The accused testified that he had met the complainant at a bar and that she had invited him over to her apartment where they had had oral sex and intercourse the first night of their acquaintance and sex on another occasion after a dinner date. The accused testified that on the night of the alleged assault the complainant had let him into her apartment seeming pleased to see him when he arrived at 1:30 a.m. and they had consensual sex in the bedroom and on the couch in the living room. The accused testified that when he told the complainant that he was leaving, she went into the washroom and threw his contact lenses down the toilet, at which point, he grabbed the complainant's arm because her actions had made him angry. The accused told the court that he was a married man who had never before "cheated" on his wife, and that he regretted his actions.

The next witness for the defence was the owner of the bar where the accused and the complainant had first met. This witness testified that the complainant was a "regular" at his bar, and that on the night that she and the accused first met she was so intoxicated that he had decided to cut her off from receiving any more alcohol. This witness went on to testify that he had known the accused and his brother for quite a long time (over one year) and that, on the night of the alleged assault, the two brothers were in his bar, drinking together. The bar owner testified that the accused left his bar at around 1:30 a.m.

In closing argument, the crown submitted that the complainant had no motive to lie and that the accused's story was too fantastic to believe. The crown noted that although there were inconsistencies in the complainant's testimony, that overall her testimonies "bore the truth."

The defence submitted that the complainant was lying and deliberately misleading the court. The defence pointed to the fact that no sperm had been found in the forensic analysis, and that there was no other evidence to support her story.

The judge directed the jury to consider all witness testimony, pointing to the fact that the accused and the complainant had told different stories and that there was no corroborating evidence. (The judge emphasized in his instructions to the jury that no sperm had been found in the forensic analysis and went on to state that vaginal bruising could be caused by a number of things such as douching.) The judge also noted to the jury that it was possible that the complainant's upset state of mind could have led her to wait a few hours before calling the police. The judge defined "sexual assault" for the jury as "any intentional touching without consent that is sexual in nature". The jury returned with a verdict of not guilty of one count under section 246.1 and guilty of common assault (section 245).

At sentencing, the crown recommended an incarceration period of one month and probation of one year, noting the abhorrent attitude of the accused and the physical injuries to the complainant. The defence asked for a suspended sentence, noting that the accused had a family and a good employment record with no previous record of assault convictions. The judge pronounced a sentence of one year probation accompanied by fifty hours of community service and commented that he felt that the accused had behaved in an irresponsible manner.

3.3.7 Trial Number Seven

This trial was held at County Court and was by judge and jury. The trial lasted three days. The accused was a 40 year old divorced man who was self-employed as a fisherman. He was charged with one count under section 246.1. The complainant was a 33 year old divorced woman who was a full-time student. The complainant was acquainted with the accused and had gone out to lunch with him on one occasion. The alleged assault occurred following a dinner date.

A ban on the publication of the complainant's identity was ordered at the beginning of the trial. Witnesses for the crown included the complainant, a friend of the complainant, one of the complainant's teachers and a police officer.

The first witness was the complainant's friend, who testified that the complainant had called him at around 2:00 a.m. on the night of the alleged assault. (The assault had occurred between 10:30 p.m. and 1:30 a.m.). This witness testified that the complainant had sounded very upset, was crying and did not seem drunk.

The next witness was one of the complainant's teachers who testified that the complainant had come into her office at school the day following the alleged assault.

The witness testified that the complainant was very upset and that her face was swollen from crying. The witness testified that she had called the police while the complainant was in her office at school.

The police officer who interviewed the complainant testified that she appeared to be extremely agitated and was crying so much that the interview had to be stopped several times so that the complainant could regain her composure. The officer testified that the complainant identified the accused's apartment as the location where the assault had taken place. After identifying the location of the alleged assault the complainant was taken to the hospital.

Medical evidence for the complainant's case was submitted to the court in the form of a doctor's report. This report detailed the complainant's injuries as including bruising to the thigh and calf, swelling, tenderness and bruising to the vagina and labia as well as redness and soreness of the mouth.

The complainant's examination-in-chief lasted one and one-half hours. The complainant testified that she had accepted an invitation to dinner with the accused and had told him that she would have to return home by 10:30 p.m. to receive a telephone call.

The complainant testified that both she and the accused had two drinks each with their dinner and that after dinner they went to the accused's apartment to have more to drink and to smoke some marijuana. While the accused and the complainant sat and talked, the accused took the complainant's legs and placed them in his lap, took off her shoes and began caressing her feet.

The complainant testified that she had resisted these physical overtures but the accused had held her legs firmly and then had lunged at her and had attempted to kiss her. The complainant testified that she pushed the accused away saying "no." At this point the accused forced the complainant to the floor and pulled off her pants. He then carried her into the bedroom and took off the rest of her clothes. The complainant testified that she had resisted the actions of the accused both physically and verbally.

The complainant testified that once he had stripped her naked the accused forced his penis into her mouth and then forced her to have two acts of genital intercourse with him. The complainant said that she had been continually resisting the accused but that at one point, she had shouted at him, "oh, go ahead and fuck me." The accused had provided the complainant with enough money for taxi fare to get home.

During cross-examination of the complainant the defence emphasized that the complainant had been drinking alcohol with dinner and that she had chosen to go over to the accused's apartment and continue drinking even though she had originally told the accused that she needed to be home by 10:30 p.m. to receive a telephone call. The defence suggested to the complainant that she had given the accused the impression that

she was interested in him sexually and that she had only proceeded with the charges because she was concerned that her boyfriend would be angry that she had had sexual relations with another man. The complainant denied these suggestions. In response to a question about her delay in reporting the alleged assault to the police, the complainant told the court that she had been too upset and was unsure of exactly what she should do. The defence finished his cross-examination of the complainant by reminding her that she had said "thank you for a wonderful evening" to the accused as she left his apartment. The complainant told the court that she had made that comment out of anger and in a very sarcastic tone. Cross-examination of the complainant lasted 45 minutes.

The defence called the accused and a forensic analyst as witnesses for the defence. The accused testified that he and the complainant both had had six drinks with dinner on the night of the alleged assault and that they had returned to his apartment for more drinks and to smoke marijuana. The accused testified that he had initiated necking with the complainant and she was responsive and consented. The accused testified that they went together to his bedroom and made love, and that the complainant had, consensually, engaged in oral sex and genital intercourse. The accused testified that the complainant was very responsive and showed no resistance. He stated that he had given her taxi fare to get home.

During cross-examination of the accused, the crown asked him if the complainant had verbally expressed any attraction to him. The accused responded that "no" she had not made any "explicit" comments. The accused stated that he had wanted sex with the complainant but that he was only interested in consensual sex. When the accused was asked why he thought the complainant would have falsely laid charges against him, he responded that he really had no idea, but it might be possible that the complainant was upset about a "political argument" that they had had during their evening together.

A forensic analyst testified that no sperm, tears or stains had been found on the clothing that the complainant had been wearing on the night of the alleged assault. This witness also testified that drugs, such as marijuana and alcohol, could act as "relaxants" and lessen a person's inhibitions.

In closing argument, the crown maintained that there was corroboration of the complainant's testimony both in the medical findings and the clear emotional upheaval that the complainant had experienced after the assault. Argument and ruling occurred prior to the defence submission in order to determine whether "honest belief" in consent was an acceptable line of defence for the accused. The defence based his reasoning for this line of defence on the length of the relationship between the complainant and the accused and on the fact that the complainant had returned to the accused's apartment after dinner for drinks and to smoke drugs as well as on her gesture of thanking the accused at the end of the evening. The defence argued that all of these facts supported his client's "honest belief" that the complainant was consenting to the sexual acts. The judge approved the submission by the defence that the accused "honestly believed" that

the woman consented to the sexual acts. In his submission to the jury, the defence pointed to all the events of the evening of the alleged assault as supporting his client's "honest belief" that the complainant was consenting to the sexual acts. The defence ended his submission by stating that "there were many emotional and psychological reasons why a woman would bring false charges of rape against a man, and that many innocent men have gone to jail as a result."

In his instructions to the jury, the judge advised them to consider the credibility of witness testimony. The judge stated that a previous relationship between these two people was not conclusive evidence of consent by the complainant and queried whether the accused could have "honestly believed" in the complainant's consent to the sexual acts. The judge went on to say that although people might expect a rape victim to scream, they should recognise that, if a victim did not scream, that there might be good reason why she didn't.

The jury found the accused guilty as charged. The sentencing date for this trial was delayed and the new sentencing date was set beyond the date established for the reporting on this component of the study.

Table 48 Summary of Trials Observed

TRIAL#	CHARGE	COMPLAINANT	ACCUSED	RELATIONSHIP	PLEA	LENGTH OF TESTIMONY	EVIDENCE CORROBORATION	VERDICT	SENTENCE
1. Judge & Jury	246.1 246.2 245	One adult female, one girl aged 15	Male, aged 34	Stranger	Not guilty 1)No assault occurred 2)Consensual intercourse	1) 30 min/ Cross-exam 60 min 2) 25 min/ Cross-exam 60 min	Bruising to neck, thigh & shoulder Severe injury vaginal wall Semen found	Guilty of 1) 245 1) 246.2	5 years (Recognition of time served) 1 year (245) 4 years(246.2)
2. Judge & Jury	246.1	Female, aged 22	Male, aged 21	Stranger	Not guilty Statement coerced	95 minutes Cross-exam 45 minutes		Guilty as charged	Six months
3. Judge & Jury	246.2	Female, aged 23 (prostitute)	Male, aged 25	Stranger	Not guilty Mistaken identity	30 minutes Cross-exam 45 minutes	Broken jaw, bruising to face.Victim's blood type matched blood stains on accused's shoes	Guilty as charged	3 years
4. Judge & Jury	246.1 246.1 246.1	3 females aged 17, 21 & 19 (past history as prostitutes)	Male, aged 38	Stranger Picked up complainants hitchhiking	Not guilty 1)No assault occurred 2) & 3) Consensual intercourse	1) 30 min/ Cross-exam 40 min 2) 50 min/ Cross-exam 90 min 3) 45 min/ Cross-exam 60 min	1) Scraped breast,bruised 2) Bruised,sperm found 3) Sperm found	Guilty of one count of 246.1	2 years less a day and an order for alcoholic treatment
5. Judge & Jury	246.1	Female, aged 30	Male, aged 26	Stranger	Not Guilty Consensual involvement	20 minutes Cross-exam 15 minutes	Welts and bruises to wrist	Guilty as charged	5 days $500 fine

Table 48 Summary of Trials Observed (Cont'd)

TRIAL#	CHARGE	COMPLAINANT	ACCUSED	RELATIONSHIP	PLEA	LENGTH OF TESTIMONY	EVIDENCE CORROBORATION	VERDICT	SENTENCE
6. Judge & Jury	246.1	Female, aged 41	Male aged 35	Had dated prior to assault	Not Guilty Consensual intercourse Charge fabricated	105 minutes Cross-exam 70 minutes	Broken blood vessels in vagina, bruising No sperm found	Guilty of 245	1 year probation 50 hours community service
7. Judge & Jury	246.1	Female, aged 33	Male, aged 40	Had dated prior to assault	Not Guilty "Honest Belief" in consent	90 minutes Cross-exam 45 minutes	Bruising to thigh and leg Redness to vagina and mouth	Guilty as charged	Sentencing date beyond reporting date

4.0 IMPACTS OF BILL C-127

For purposes of this evaluation, the overall objectives of the substantive, procedural and evidentiary changes made to the law with the introduction of Bill C-127 may be defined as:

- o extending legal protection and responsibility to a wider range of Canadians (e.g., spouses, males) thereby enhancing protection from a broader range of nonconsensual sexual offences;

- o increasing the reporting, founding, charging and conviction rates for cases of sexual assault; and

- o reducing or preventing the secondary victimization of sexual assault victims resulting from their involvement in the criminal justice system (in particular, during the trial).

Our primary purpose in this chapter is to discern the extent to which the 1983 amendments are responsible for any observed changes over time and to explore other factors that may be causing, enhancing or retarding the realization of the intended impacts of the legislative amendments. To do this, we identify any changes in the type of persons coming forward to report, the type of offences being reported, the way in which reports are processed, and the final outcomes from the involvement of the police and courts.

As discussed previously, our ability to attribute causality for any observed changes to the effects of Bill C-127 is severely limited. Other factors, such as independent changes in mass media portrayals of the crime, improved public awareness and education, or changes in the organization, mandate, policies or resources of front line agencies (e.g., police, sexual assault centres, hospitals), might account for observed changes. In order to discern the relative effects of Bill C-127, one must rely on logic, careful analysis of the quantitative data and the corroboration of the key informants from the criminal justice system and related social agencies.

The major line of evidence used in this chapter is the quantitative data collected from the police and crown files regarding sexual assaults reported in the 1981/82 and 1984/85 calendar years. The preamendment reports from 1981 and 1982 are referred to throughout this chapter as Time One cases, while the post-amendment reports from

1984 and 1985 are referred to as Time Two cases.[1] The remainder of this chapter is organized into three major sections: changes in reporting, changes in founding and charging rates, and changes in final court outcomes.

4.1 Changes in Offences Reported

In this first section, we compare the Time One and Time Two reports to the police along such dimensions as the number of reports made, the characteristics of the complainant, the characteristics of the assailant and the nature of the assault. By documenting differences in the reporting populations and offence characteristics between the two time periods, we may be better able to account for the relative impacts of the legislative amendments on the processing and final outcomes of cases.

4.1.1 Number of Assaults Reported

The occurrence report computer file of the Vancouver police was used to provide the list of the occurrence report file numbers that were sampled. This file labelled occurrences as rape, attempted rape, indecent assault (male or female) and the three levels of sexual assault. When we actually examined our sample of files, we found a few discrepancies between these computer labels and the more precise classification of the report according to the specific sections of the Criminal Code that the police had considered to have been violated. We also encountered a small number of reports involving juveniles. These were deleted from the population estimates and sample. There were also a minority of cases that involved (possible) multiple charges.

In Table 49 we display the classification of offences reported according to the most serious sections of the Criminal Code. In other words, if the possible charge under section 246 was both Levels I or II sexual assault, we have labelled the case as Level II. We have presented both the population estimates and the sample drawn.

One-half of the Time One incidents were classified as indecent assault (female). Only about two per cent were indecent assault on a male. Just less than one-half (48 per cent) involved rape or attempted rape.

The vast majority (82 per cent) of Time Two incidents were classified as Level I sexual assault. Only 13 cases, or three per cent, were classified as Level III (aggravated sexual assault). The remainder (15 per cent) were classified as Level II sexual assault.

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[1] As most of the information collected was nominal or categorical, tests for statistically significant changes over time were primarily conducted using chi squares calculated for contingency tables. Unless otherwise noted, all results reported are significant at the .05 level or better.

Table 49 Comparison of Sample Cases with Population of Cases for Reported Sexual Assaults by Most Serious Charge

Time One	Population	Percentage	Sample Drawn	Percentage
Rape/attempted rape	253	47.9	88	44.7
Indecent assault (female)	265	50.2	100	50.8
Indecent assault (male	10	1.9	9	4.5
TOTAL	528	100.0	197	100.0
Time Two				
Level III - aggravated	13	3.2	13	5.9
Level II - weapon, bodily harm, party to	61	14.9	61	28.0
Level I	334	81.9	144	66.1
TOTAL	408	100.0	218	100.0

Note: These figures include only those cases where victims were 18 years of age or older.

We drew simple random samples of the police occurrence reports for cases involving rape or attempted rape, indecent assault on females and sexual assault (Level I). These samples were drawn using a random numbers table. We were concerned that, if we used only simple random sampling techniques, the low overall numbers of cases involving indecent assaults on males and sexual assault Levels II and III would result in few if any of these cases being selected. We therefore decided to conduct a census of each of these classifications.

One-half (51 per cent) of our sample of Time One (1981/82) cases involved indecent assaults on females. Approximately 45 per cent of the Time One sample included cases involving rape or attempted rape, while less than five per cent of the sample included cases involving indecent assaults on males.

Of the Time Two sample of sexual assault cases, 66 per cent were classified as Level I, 28 per cent as Level II and 6 per cent as Level III.

Making comparisons between the two time periods is problematic as the Criminal Code sections are not identical. The charge of rape, for example, required proof of vaginal penetration. The 1983 amendments aggregated the requirement for proof of

vaginal penetration thereby extending coverage to include coercive anal or oral penetration. The three levels of section 246 are distinguished by the level of violence or aggravating factors associated with an assault. No such distinction was made before 1983. Bill C-127 also extends protection to previously unprotected spouses and is "gender neutral" -- i.e., the law extends equal liability and protection to both males and females. We can, however, conclude that the number of reports in which victims are 18 years of age or older has decreased from 528 in the two-year period 1981/82 to 408 in the two-year period 1984/85.

4.1.2 Changes in the Characteristics of Complainants

What types of people reported sexual assaults to the police before and after the amendments? To what extent did the amendments encourage a higher incidence of reporting or a change in the type of person coming forward to complain? To answer these questions we look at the sociodemographic characteristics of the complainants.

The vast majority of the complainants in both time periods were female (see Table 50). The proportion of male complainants increased marginally from less than four per cent in Time One to more than five per cent in Time Two. This is not a statistically significant increase.[2] Although one might have expected males to be more likely to report sexual assaults since the legislative amendments, the lack of a significant increase between Times One and Two may reflect such factors as the perceived social

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[2] It is conventional to say that statistical significance is achieved when the observed results have a less than one per cent (.01) or five per cent (.05) chance of being the result of sampling fluctuations rather than due to true differences between groups. A major problem, however, is that the Chi-square significance tables assume that a simple random sample is being used, and that the sample is less than one tenth of the universe. We are using a stratified sample which makes it harder to achieve statistical significance. On the other hand we have 37 per cent of all Time One cases in our sample and 53 per cent of all Time Two cases. The probability of achieving significance increases with sample size, and as sample size increases as a proportion of the total number of cases in the universe. (In a census, all differences are statistically significant.) One effect roughly cancels out the other.

Throughout this report we distinguish between statistical and substantive significance. We emphasise only those changes that have achieved the conventional statistical significance levels, and which the research literature also suggests are substantively significant.

Unless otherwise noted, we tested for statistical significance using the Chi-squares computed for contingency tables (crosstabulations).

stigma attached to being a victim of a sexual assault, public perceptions of the likely criminal justice system reaction, lack of public awareness of the legal recourse available, etc.

How old were the adults who reported sexual assaults to the police? Our findings show that age remained relatively constant between the two time periods. Table 51 displays the distribution of complainants by age. For both time periods, the average age of the complainant (at the time of the assault) was 27 years. There was a decline in the proportion of complainants between 18 and 30 years of age, while there was a small increase in the proportion of complainants over 30 years of age.

Table 50 Gender of Complainant by Time Period

	TIME ONE		TIME TWO	
	Number	Percentage	Number	Percentage
Female	184	96.3	205	94.9
Male	7	3.7	11	5.1
TOTAL	191	100.0	216	100.0
Missing	6		2	

$x^2 = 0.21, p < .65$

Source: Unweighted police database

Table 51 Age of Complainant by Time Period

	TIME ONE		TIME TWO	
	Number	Percentage	Number	Percentage
18 to 30	133	75.6	148	71.1
31 to 40	35	19.9	46	22.1
Over 40	8	4.5	14	6.7
TOTAL	176	100.0	208	99.9
Missing cases	21		10	

$x^2 = 1.27, p < .53$

Mean age	27.04 years	27.63 years

Source: Unweighted police database

We also have data on the marital status of the complainant for a minority of our cases (see Table 52). It appears that the proportion of victims who were married or in common law relationships at the time of the assault has increased marginally, while the proportion of victims who were single at the time of the assault has decreased between Times One and Two.[3]

Table 52 Marital Status of the Victim

	TIME ONE		TIME TWO	
	Number	Percentage	Number	Percentage
Single, never married	29	58.0	33	50.8
Married or common law	17	34.0	26	40.0
Separated, divorced or widowed	4	8.0	6	9.2
TOTAL	50	100.0	65	100.0
Missing cases	147		153	

$x^2 = 8.26, p < .09$

Source: Unweighted police database

Because the amendments extended protection to women assaulted by their spouses, even if legally separated, one might have expected a higher incidence of married complainants in Time Two. In Time One, three complainants reported an assault by an ex-spouse (see Table 54), while in Time Two, we found four such reports of assaults by spouses, common law partners or recently separated partners representing just over two per cent of the total. Thus, in absolute and relative terms, the number of spouses (or ex-spouses) complaining is very low. It is also possible that some such incidents reported in Time One were classified as physical abuse. The figures do show, however, that spouses (and ex-spouses) are not making use of the new provisions to the level that might have been expected. In the following section, we examine the relationship between the victim and (alleged) offender more closely.

We have some limited information on the employment status of complainants. Table 53 presents our findings. Given the high number of missing cases, it is difficult to

[3] At the conventional .05 level, this change was not statistically significant, however, at the .10 level the change was statistically significant. Given the small number of cases, however, one must be careful not to overstate this change as the missing cases may differ systematically from the cases presented.

assess whether there have been any significant changes over time. It is interesting that the proportion of complainants who were prostitutes in both time periods was quite high. Also, approximately one-quarter of complainants in each time period were unemployed. The high number of cases for which data were missing suggests that any changes may be due to sampling error rather than real differences in the type of person coming forward to report.

Table 53 Occupation of Complainant by Time Period

	TIME ONE		TIME TWO	
	Number	Percentage	Number	Percentage
Employed	20	34.5	31	36.9
Not employed	20	34.5	22	26.2
Prostitute	14	24.1	26	31.0
Student	4	6.9	5	5.9
TOTAL	58	100.0	84	100.0
Missing cases	139		134	

$x^2 = 6.07, p < .54$

Source: Unweighted police database

The majority (81 per cent) sexual assaults reported in Time One involved assailants who were strangers to the complainant. This percentage (see Table 54) decreased significantly over time to 67 per cent in Time Two. This decrease in the incidence of stranger assaults among the adult complainant population may reflect greater public awareness of the dangers of putting oneself in risky situations. On the other hand, a widespread public perception that these types of cases are more difficult to resolve may also account for the depressed number of these reports over time.

The proportion of assaults by current or former spouses or common law partners has increased from two per cent of Time One reports to seven per cent of Time Two reports. Assaults by other relatives decreased from two per cent of Time One reports to less than one per cent of Time Two reports.

Assaults by friends or associates increased from ten per cent of Time One reports to approximately 17 per cent of Time Two reports. The proportion of reports involving assaults by customers of prostitutes remained about the same between the two time periods (five and eight per cent respectively).

Table 54 Relationship Between Victim and Offender by Time Period

	TIME ONE		TIME TWO	
	Number	Percentage	Number	Percentage
Stranger	156	80.8	138	67.3
Spouse/partner	4	2.1	15	7.3
Relative	4	2.1	1	0.5
Friend/associate	20	10.4	34	16.6
Trick	9	4.6	17	8.3
TOTAL	193	100.0	205	100.0
Missing Cases	4		13	

$x^2 = 15.01, p < .005$

Source: Unweighted police database

4.1.3 Changes in Characteristics of Alleged Assailants

In 99 per cent of the reported incidents during both time periods, the individuals accused of sexual assault were male. Because many of the reported assaults involving adult complainants are very likely to involve strangers, background sociodemographic data are not available. In other cases, such data were not recorded in the police reports.

On the basis of those cases for which data were available, the average age of the offender was 31 years in Time One and 34 years in Time Two. This increase was not statistically significant. Table 55 displays the distribution of offenders by age. Over one-half of alleged offenders (56 per cent in Time One and 51 per cent in Time Two) were between 19 and 30 years of age. Approximately one-quarter of alleged offenders were between 31 and 40 years of age during both time periods. There appears to have been an increase in the proportion of alleged offenders over 40 years of age. However, given the large number of missing cases we cannot be certain whether these are real changes or a reflection of sampling biases.

Table 55 Age of Offender by Time Period

	TIME ONE		TIME TWO	
	Number	Percentage	Number	Percentage
18 or less	2	4.0	2	2.7
19 to 30	28	56.0	37	50.7
31 to 40	13	26.0	19	26.0
Over 40	7	14.0	15	20.5
TOTAL	50	100.0	73	99.9
Missing cases	147		145	

$x^2 = 1.01, p < .80$

Mean age 31.3 years 33.0 years

Source: Unweighted police database

Table 56 Marital Status of Offender by Time Period

	TIME ONE		TIME TWO	
	Number	Percentage	Number	Percentage
Single, never married	18	64.3	34	60.7
Married/common law	7	25.0	17	30.4
Separated, divorced or widowed	3	10.7	5	8.9
TOTAL	28	100.0	56	100.0
Missing cases	169		162	

$x^2 = 2.38, p < .80$

Source: Unweighted police database

Data on the marital status of alleged offenders are available in a minority of the reports in both time periods (see Table 57). These data show fewer single, never-married offenders, and more currently married/common law offenders over time. The differences were not, however, statistically significant. Given the high number of missing cases and the lack of statistical significance of the shift, undue stress should not be placed on this finding as demonstrating a real change over time.

Offenders in Time Two were no more nor less likely to have a prior criminal record than Time One offenders. In both time periods about one-quarter of the alleged offenders had prior criminal records for sexual offences while just less than half of the alleged offenders (44 per cent) had prior criminal records for nonsexual offences. Again we note a sizeable number of missing cases; these alleged offenders may or may not exhibit the same likelihood of having a prior criminal record (see Table 57).

Table 57 Prior Criminal Record of Offender by Time Period

	TIME ONE		TIME TWO	
	Number	Percentage	Number	Percentage
No prior record	8	29.6	15	27.8
Prior sexual offences	7	25.0	15	27.8
Prior nonsexual offences	12	44.4	24	44.4
TOTAL	27	100.0	54	100.0
Missing cases	170		162	

$x^2 = 0.44, p < .98$

Source: Unweighted police database

4.1.4 Changes in the Types of Incidents Reported

In this section, we describe the incidents reported in terms of their timing, number of people involved, context, type of sexual contact and level of violence. Although all cases reviewed were reported in 1981, 1982, 1984 or 1985, not all reported incidents had taken place in these four years. The vast majority of the reports, however, concerned incidents that took place in the year of the report.

The vast majority of reported incidents involved a single victim and single offender. There were no significant shifts noted over time either in the mean number of victims or assailants or the proportion of reports involving multiple victims or assailants (see Table 58).

Table 58 Number of Offenders and Complainants by Time Period

	TIME ONE		TIME TWO	
	Number	Percentage	Number	Percentage
Number of Victims				
One	195	99.0	211	97.2
Two	2	1.0	6	2.8
TOTAL	197	100.0	217	100.0
Missing cases	-		1	
		$x^2 = 0,87, p < .36$		
Number of Assailants				
One	173	87.8	196	90.7
Two	13	6.6	14	6.5
Three or more	11	5.6	6	2.8
TOTAL	197	100.0	216	100.0
Missing cases	-		2	
		$x^2 = 5.61, p < .47$		

Source: Unweighted police database

What were the circumstances immediately before the assaults? The results displayed in Table 59 show that there were no significant shifts over time in the nature of these circumstances. In both time periods, approximately 15 per cent of the complainants were at home, while approximately one-half (58 per cent in Time One and 49 per cent in Time Two) were outside walking or hitchhiking. Less than one-fifth of complainants (15 per cent in Time One and 18 per cent in Time Two) were out on a date, at a bar or at a social gathering.

Table 59 Activity Immediately Preceding the Assault by Time Period

	TIME ONE		TIME TWO	
	Number	Percentage	Number	Percentage
Victim at home	28	14.6	32	15.2
Victim outside	112	58.3	104	49.3
Date/bar/party	29	15.1	37	17.5
Other indoor setting	7	3.6	17	8.1
Other	16	8.3	21	9.9
TOTAL	192	100.0	211	100.0
Missing cases	5		7	

$x^2 = 11.58, p < .40$

Source: Unweighted police database

Table 60 Presence of Alcohol or Drugs in Victim or Assailant by Time Period

	TIME ONE		TIME TWO	
	Number	Percentage	Number	Percentage
Victim				
Intoxicated	57	28.9	76	35.7
Not intoxicated	140	71.1	137	64.3
TOTAL	197	100.0	213	100.0
Missing cases	-		5	

$x^2 = 1.83, p < .18$

Assailant				
Intoxicated	41	20.9	65	30.4
Not intoxicated	155	79.1	149	69.6
TOTAL	196	100.0	214	100.0
Missing cases	1		4	

$x^2 = 4.29, p < .04$

Source: Unweighted police database

Intoxicants were involved in a minority of cases, and there were no significant differences in the proportions of victims using alcohol or drugs over time. Twenty-nine per cent of the Time One reports indicated that the victim was either intoxicated or under the influence of drugs at the time of the assault. This rose to 36 per cent in Time Two.

In contrast, there was a significant change in the proportion of assailants using drugs/alcohol over time ($p<.04$). Twenty-one per cent of offenders had used alcohol or drugs in Time One compared to 30 per cent in Time Two (see Table 60).

Given the similarities noted in the activities preceding the assaults, a uniform pattern over time emerged in the physical locations in which assaults took place. As can be seen from Table 61, assaults were most likely to take place in an outdoor location during Time One. The second most frequent location during Time One was the assailant's home or automobile. During Time Two the order for these two locations was reversed; the most likely location for assaults was the offender's home or car followed by outdoor locations. The victim's home was an unlikely location for the assaults in both time periods.

Table 61 Location of Assault by Time Period

	TIME ONE		TIME TWO	
	Number	Percentage	Number	Percentage
Victim's home	25	12.8	39	18.4
Offender's home/car	59	30.3	70	33.0
Outside	77	39.5	61	28.8
Other inside location	20	10.3	27	12.7
Other location	14	7.2	15	7.1
TOTAL	195	100.1	212	100.0
Missing cases	2		6	

$x^2 = 10.57, p < .16$

Source: Unweighted police database

Table 62 Type of Sexual Contact by Time Period

	TIME ONE		TIME TWO	
	Number	Percentage	Number	Percentage
Touching/grabbing	92	46.7	97	44.5
Not indicated	105	53.3	121	55.5
		$x^2 = 0.12, p < .73$		
Masturbation of assailant	3	1.5	-	0.0
Not indicated	194	98.5	218	100.0
		$x^2 = 1.56, p < .22$		
Digital/object penetration	4	2.0	10	4.6
Not indicated	193	98.0	208	95.4
		$x^2 = 1.36, p < .25$		
Oral sex on assailant	14	7.1	12	5.5
Not indicated	183	92.9	206	94.5
		$x^2 = 0.22, p < .64$		
Oral sex on victim	7	3.6	-	0.0
Not indicated	190	96.4	218	100.0
		$x^2 = 5.88, p < .02$		
Attempted intercourse	5	2.5	8	3.7
Not indicated	192	97.5	210	96.3
		$x^2 = 0.14, p < .71$		
Genital intercourse	43	21.8	43	19.7
Not indicated	154	78.2	175	80.3
		$x^2 = 0.17, p < .69$		
Anal intercourse	7	3.6	12	5.5
Not indicated	190	96.4	206	94.5
		$x^2 = 0.51, p < .48$		
Combined-genital intercourse and other contact	34	17.3	36	16.5
Not indicated	163	82.7	182	83.5
		$x^2 = 0.01, p < .95$		

Source: Unweighted police database

What kinds of sexual activities took place? Table 62 displays a breakdown of reports according to various types of sexual contact. These percentages should be considered as minima, as we cannot simply assume that no such contact took place if it was not mentioned in the police report. It may be that some types of sexual contact were not mentioned by the complainant, or were not recorded by the investigating officer. For example, touching or grabbing might not have been recorded if sexual intercourse took place. We assume that these types of potential underestimation are therefore more likely for the "milder" forms of sexual contact and unlikely for attempted or completed genital or anal intercourse.

In Table 63 we have loosely grouped the reports by two categories of sexual contact: (i) sexual touching and (ii) anal or genital penetration with a finger, object or penis. The proportion of cases in our sample in which there was penetration remained constant between the two time periods.

Table 63 Incidence of Penetration by Time Period

	TIME ONE		TIME TWO	
	Number	Percentage	Number	Percentage
Penetration	88	44.7	97	44.5
Sexual touching	109	55.3	121	55.5
TOTAL	197	100.0	218	100.0

$x^2 = 0.00$, $p = 1.00$

Source: Unweighted police database

Note: "Penetration" includes the insertion of a finger or object, and attempted or completed anal or genital intercourse. All other types of sexual contact (oral sex, masturbation, touching/grabbing, etc.) are defined as "sexual touching."

The last aspect to be treated in this section concerns the level of accompanying violence. In reviewing these findings, it is important to bear in mind that threats of the use of physical force may not have been necessary to obtain the submission of the complainant to the sexual activity. Victims can be so frightened or traumatized by the potential threat posed by the aggressor that they submit for fear of the consequences. In other instances, the victim may have initially participated in some form of sexual activity but was made to feel that his or her decision to terminate the activity was unjustified. We point this out simply to indicate that the following statistics may not give a true picture of the forces operating on the victim at the time of the alleged assault.

There were four statistically significant variations over time in the incidence of accompanying violence. For example, increase in the use of physical force (from 47 to 62 per cent of reports ($p<.002$)) and the incidence of physical injuries to victims (from 17 to 38 per cent of reports ($p<.001$)) have been observed. In contrast, the incidence of accompanying offences (e.g., robbery, etc.) decreased significantly over time (from fifteen to eight per cent of reports ($p<.05$)). Finally, the proportion of reports that indicated that the complainants physically or verbally resisted their assailants increased significantly over time from 44 to 56 per cent ($p<.01$).

We note that these changes may reflect the sampling strategy we adopted rather than any generalized differences in the levels of accompanying violence over time. In order to ensure that our Time Two sample included Level II and Level III assaults we stratified our sample by classification. By definition, Level II and Level III assaults involve accompanying violence, thus the increased incidence of accompanying violence over time may be artificially inflated due to our overrepresentation of Level II and Level III assaults in our Time Two sample.

Table 64 Accompanying Violence by Time Period

	TIME ONE		TIME TWO	
	Number	Percentage	Number	Percentage
Use of weapon	32	16.3	59	27.1
Not indicated	165	83.7	159	72.9
		$x^2 = 6.72, p < .01$		
Threats of harm	58	29.4	74	33.9
Not indicated	139	70.6	144	66.1
		$x^2 = 0.76, p < .39$		
Physical force used	92	46.7	136	62.4
Not indicated	105	53.3	82	37.6
		$x^2 = 9.42, p < .002$		
Humiliation of victim	23	11.7	30	13.8
Not indicated	174	88.3	188	86.2
		$x^2 = 0.24, p < .63$		
Resistance by victim	87	44.2	123	56.4
Not indicated	110	55.8	95	43.6
		$x^2 = 11.40, p < .01$		
Accompanying offences	29	14.7	17	7.8
Not indicated	168	85.3	201	92.2
		$x^2 = 4.38, p < .04$		
Physical injury to victim	33	16.8	83	38.1
Not indicated	164	83.2	135	61.9
		$x^2 = 23.40, p < .001$		
Psychological injury	4	2.0	2	0.9
Not indicated	193	98.0	216	99.1
		$x^2 = 0.28, p < .60$		

Source: Unweighted police database

4.2 Changes in the Processing of Reports by the Criminal Justice System

In this section, we consider any changes in the factors that are significantly associated with the processing of reports by the criminal justice system, including changes in the sequence of agency involvement and changes in the founding and charging rates.

4.2.1 Changes in Agency Involvement

There were no significant differences noted over time in the person or agency to whom the complainant first disclosed the assault. In both time periods, approximately 43 per cent of complainants spoke first to the police (see Table 65), while over one-quarter spoke first to family members or friends. Between five and six per cent of complainants in both time periods first disclosed their assaults to social agencies (e.g., hospital, rape crisis centre).

In Time One, two-thirds of the reports to the police were made by the victim, while in Time Two this increased to 76 per cent. While this increase does not achieve conventional levels of statistical significance, the finding does suggest that victims are more likely to report sexual assaults directly to the police since the amendments (see Table 66).

As noted previously, the 1983 legislative changes included the abrogation of the rules of evidence regarding "recent complainant." The assumption had been that an allegation was likely to be fabricated if the victim did not report the incident at the first "reasonable" opportunity. The recent complainant rule was dropped in recognition that shame, fear of retaliation or fear of the impact on the victim's reputation or personal relationships do not encourage prompt complaint.[4] A majority of the reports to the police occurred within 24 hours after the time of the assault. The percentages were 87 per cent in Time One and 88 per cent in Time Two. These proportions are not significantly different. If the report was made more than 24 hours after the assault, we looked at the reasons for the delay given in the police report.

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[4] Reubsaat, The New Sexual Assault Offences, pp.50-51.

Table 65 Person or Agency to Whom the Complainant First Disclosed the Assault by Time Period

	TIME ONE		TIME TWO	
	Number	Percentage	Number	Percentage
Police	83	43.9	89	43.4
Family/friend	56	29.6	55	26.8
Social agency	10	5.3	13	6.3
Other	40	21.2	48	23.4
TOTAL	189	100.0	205	99.9
Missing cases	8		13	

$x^2 = 8.73, p < .65$

Source: Unweighted police database

Table 66 Relationship of Complainant to the Victim by Time Period

	TIME ONE		TIME TWO	
	Number	Percentage	Number	Percentage
Same	132	67.0	159	76.4
Relative	11	5.6	9	4.3
Friend/acquaintance	16	8.1	10	4.8
Social agency	8	4.1	10	4.8
Other	30	15.2	20	9.6
TOTAL	197	100.0	208	99.9
Missing cases	-		10	

$x^2 = 19.48, p < .08$

Source: Unweighted police database

If we examine the reasons given for delays we find that the one most frequently offered was that the victim was not the person who made the report to the police, and that there was a delay in disclosing the assault to the reporter. This reason was cited for just under one-third of delayed reports in both Time One and Time Two. Other reasons included not knowing who to contact or what to do, fear of retaliation and the belief that the police could not do anything.

Table 67 Order in Which Various Agencies Were Contacted by Time Period

	TIME ONE		TIME TWO	
	Number	Percentage	Number	Percentage
Police				
First	174	89.2	192	89.7
Second	18	9.2	18	8.4
Third	3	1.5	4	1.9
TOTAL	195	99.9	214	100.0
Missing cases	2		4	
		$x^2 = 0.15, p < .93$		
Medical Facilities				
First	10	5.1	16	7.6
Second	50	25.6	82	38.9
Third/fourth	4	2.0	3	1.4
No contact	131	67.2	110	52.1
TOTAL	195	99.9	211	100.0
Missing cases	2		7	
		$x^2 = 11.36, p < .03$		
Sexual Assault Centre				
First	7	3.6	5	2.4
Second	1	0.5	2	1.0
Third	1	0.5	7	3.4
No contact	185	95.4	192	93.2
TOTAL	194	100.0	206	100.0
Missing cases	3		12	
		$x^2 = 4.94, p < .18$		

Source: Unweighted police database

If we consider the order in which the police, medical facilities, the sexual assault centre and other agencies were contacted, we find that the police remain the most popular agency of first contact (see Table 67). In only about five to seven per cent of the police files was there mention of any contact with the sexual assault centre. Approximately four per cent of the complainants in Time One, and two per cent in Time Two went first to the sexual assault centre. These figures may understate the true

use of the centre, if the fact of contact was either not mentioned or not by the investigating officer, or if the complainant sought assistance from the centre only after reporting to the police.

If we look at the proportions of incidents for which no contact was made with the various (non-police) agencies, we find a marginally significant increase over time in the use of medical facilities. Table 68 presents our findings regarding whether or not the victim received medical attention. In Time One, one-third of the victims received medical attention, while in Time Two this figure rose to 48 per cent. This shift over time was statistically significant ($p<.003$).

Table 68 Medical Attention by Time Period

	TIME ONE		TIME TWO	
	Number	Percentage	Number	Percentage
Medical attention received	65	33.0	104	48.0
No medical attention	132	67.0	113	52.0
TOTAL	197	100.0	217	100.0
Missing cases	-		1	

$x^2 = 8.92, p < .003$

Source: Unweighted police database

Table 69 presents the location where medical attention was received by victims. Over time it appears that the focus for providing medical attention to victims of sexual assaults shifted from the Vancouver General and St. Paul's Hospitals to the Shaughnessy Hospital.

Table 69 Where Medical Attention Received by Time Period

	TIME ONE		TIME TWO	
	Number	Percentage	Number	Percentage
Shaughnessy	5	7.8	76	76
Private clinic	1	1.6	6	6
St. Paul's	15	23.4	10	10
Vancouver General	41	64.1	7	7
Lion's Gate	2	3.1	1	1
TOTAL	64	99.9	100	100
Missing cases	2		14	

$x^2 = 87.54, p < .001$

Source: Unweighted police database

4.2.2 Changes in Police Investigations

Table 70 presents data regarding the number of interviews conducted by the police with complainants. Over time the proportion of cases in which more than one interview was conducted with the complainant increased significantly ($p<.001$). In Time one, approximately twenty-three per cent of the cases involved two or more interviews compared with 41 per cent of the Time Two cases.

Table 70 Number of Interviews with the Police by Time Period

	TIME ONE		TIME TWO	
	Number	Percentage	Number	Percentage
One	150	77.3	123	59.1
Two	35	18.0	65	31.3
Three or more	9	4.6	20	9.6
TOTAL	194	99.9	208	100.0
Missing cases	3		10	

$x^2 = 18.97, p < .001$

Source: Unweighted police database

From the police reports, we know that the same officer conducted the initial and all subsequent interviews with individual complainants in 24 cases during Time One (56

per cent of the cases where more than one interview was conducted). In contrast, the same officer conducted all interviews with individual complainants in only eight of the 85 cases (nine per cent) where there was more than one interview conducted during Time Two. This statistically significant decrease in vertical investigations over time ($x^2=31.30$, $p<.001$) suggests that either the number of police staff available in Time Two to handle sexual assault reports has significantly declined, or that demands on the police have significantly increased (e.g., young victims of sexual assault).

The investigating officer must determine whether a crime has been committed, in other words, whether or not the complainant appears to be fabricating the story, and if founded or true, whether or not the incident falls within the legal definition of rape, indecent assault or sexual assault. In order to assess the validity of the claim, the officer may suggest that the complainant is lying in order to witness her or his reaction.

For 15 per cent of Time One reports and 20 per cent of Time Two reports, the police records indicate that the investigating officer suggested that the victim was lying. The increase over time was not statistically significant.

Before the amendments, the prior sexual history of the complainant, with persons other than the accused, could be examined in court in order to challenge the victim's credibility or to establish her consent. The assumption was that if the victim had consented to intercourse before, she had probably consented on the occasion in question. Implicit was the notion that a sexually active woman, or a woman of promiscuous character, was more likely to be an untruthful witness.[5] As a result of the amendments, the admissibility of evidence regarding the previous sexual history of the complainant was limited to three specific circumstances. One would therefore expect to see a decline over time in the proportion of interviews in which the complainant's "character" was questioned.

In Time One, the police suggested that the complainant was promiscuous or of bad character in five per cent of the interviews. In Time Two this had altered slightly to approximately nine per cent, although the change is not statistically significant. While we had expected to see a decline, we do note that the proportion of cases in which the complainant's "character" was questioned in both time periods was very low.

The police suggested a need for polygraphs to test the complainant in three cases in Time One and in only one case during Time Two. The police reports also indicate that the complainant was threatened with a public mischief charge in three Time One interviews and one Time Two interview. The change over time was not statistically significant.

In Time One and Time Two, reports involving complainants who worked as prostitutes were 13 per cent and 18 per cent respectively of the sampled cases. In a

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[5] Reubsaat, The New Sexual Assault Offences, pp.62-67.

small minority of cases, the police reports noted that the victims had prior criminal records (four per cent in Time One and just over six per cent in Time Two).

What types of evidence were collected by the police in order to corroborate the complaint? Table 71 displays the types of evidence that support the complaint. Our findings show that, in Times One and Two, a minority of reports were supported with material, or forensic evidence or an eyewitness. Approximately one-third of reports in both time periods were corroborated by forensic medical evidence. In Time One, 27 per cent of reports were corroborated by other material evidence such as torn clothing or descriptions of the assailant's car, etc., while in Time Two only 19 per cent of reports were corroborated by other material evidence. This decline was statistically significant ($p < .02$).

Approximately one-half of the complaints (49 per cent) in time One and 46 per cent in Time Two were supported by a corroborating witness. There were eyewitnesses to eleven per cent of the assaults in Time One and 16 per cent of the assaults in Time Two. This increase was statistically significant ($p < .02$). Finally, 17 per cent of Time One reports and 38 per cent of Time Two reports indicated that the victim had sustained physical injuries as a result of the assault. This too was a statistically significant increase ($p < .001$).

Table 71 Evidence Corroborating the Complaint by Time Period

	TIME ONE		TIME TWO	
	Number	Percentage	Number	Percentage
Forensic evidence	62	32.0	74	35.4
None	132	68.0	135	64.6
TOTAL	194	100.0	209	100.0
Missing cases	3		9	
		$x^2 = 3.04$, $p < .22$		
Other material evidence	53	27.3	39	18.8
None	141	72.7	168	81.2
TOTAL	194	100.0	207	100.0
Missing cases	3		11	
		$x^2 = 8.02$, $p < .02$		
Eyewitnesses	22	11.4	12	5.9
None	171	88.6	192	94.1
TOTAL	193	100.0	204	100.0
Missing cases	4		14	
		$x^2 = 8.67$, $p < .02$		

Table 71 Evidence Corroborating the Complaint by Time Period (Cont'd)

Corroborating witnesses	94	48.5	96	46.4
None	100	51.5	111	53.6
TOTAL	194	100.0	207	100.0
Missing cases	3		11	
		$x^2 = 4.11, p < .13$		
Physical injuries	33	16.9	83	38.4
None	162	83.1	133	61.6
TOTAL	195	100.0	216	100.0
Missing cases	2		2	
		$x^2 = 23.40, p < .001$		

Source: Unweighted police database

If we consider all the types of corroboration, 65 per cent of Time One cases and 69 per cent of Time Two cases had forensic or material evidence or witnesses corroborating the complaint. This difference was not significant.

For 62 per cent of Time One reports and 68 per cent of Time Two reports, an offender could be identified by the complainant. This difference was not statistically significant.

4.2.3 Factors Influencing Reporting Outcomes

Lorenne Clark and Debra Lewis, in their 1977 study of 116 rapes reported to the Metropolitan Toronto police concluded:

> The progress of a rape case through the criminal justice system reflects a highly selective process of elimination. Only a fraction of all rapes are reported; only a fraction of reported rapes are classified as founded; only a fraction of founded cases lead to an arrest; and only a fraction of suspects arrested are convicted.[6]

We have no evidence in this report to offer on the subject of reporting rates, and we consider the conviction rates in the following section. Here we look at the attrition of cases reported to the Vancouver police and the characteristics of the victim, assailant, offence or evidence that help explain founding and charging.

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[6] Clark and Lewis, Rape: The Price of Coercive Sexuality, p.57.

In this section, we focus on the two primary decisions affecting the outcomes of reports, the founding and charging decisions either occurrence reports are labelled as "unfounded" (untrue/no offence took place), or they are proceeded with in some manner (i.e., they are considered as "founded" or they are "temporarily inactive pending further identification"). Reports are considered unfounded if the police believe the story to have been fabricated by the complainant or if no (sexual assault) crime took place. Reports are considered as founded if the police believe the complainant's report.

In many founded cases, however, the crown Charge Approval Board does not approve the laying of a charge. For the purposes of this study, these cases are labelled as "cleared otherwise." The majority of these are (i) cases for which an identified assailant cannot be apprehended; (ii) cases which the victim is unwilling to pursue; (iii) cases in which "no useful purpose would be served by laying an information;" and (iv) cases with a perceived lack of "convictability." In many of the assaults involving a stranger, the assailant either cannot be identified by the victim, or if identified cannot be apprehended by the police (e.g., diplomatic immunity, residing in a foreign country). In other cases, where the assailant can be identified, the victim may be unwilling to go to court, often preferring that the assailant be warned, that the incident be noted, or that the assailant receive therapy. As the victim is the primary witness for the prosecution, an unwilling witness means that there is virtually no case for the crown prosecutor to pursue.

In Table 72, we display the distribution of reports according to their classification as either founded or unfounded for the two time periods. The vast majority of reports in both time periods were considered as founded. Although the proportion of reports considered as unfounded rose from seven to eleven per cent, this increase was not statistically significant.[7]

Table 72 Founding Rate by Time Period

	TIME ONE		TIME TWO	
	Number	Percentage	Number	Percentage
Founded	177	93.2	166	88.8
Unfounded	13	6.8	21	11.2
TOTAL	190	100.0	187	100.0
Missing cases	7		31	

$x^2 = 1.71, p < .20$

Source: Unweighted police database

[7] Again, we are using Chi-squares to test the statistical significance of the cross-tabulation of outcome by time period. In the rest of this section we test for significance using crosstabulations of outcome with various hypothesized predictor variables.

In the previous section, we profiled the differences in complainant, offender and offence characteristics for reports made to the police in Vancouver during the two time periods. Having outlined the underlying differences between the two samples of cases, we can now explore the differences in how cases were processed by the criminal justice system before and after the 1983 amendments, and attempt to account for the role that the legislative reforms has had on any observed changes over time.

We noted previously that, according to Holmstrom and Burgess, the police do not consider all claims of rape to be equal. Rather they are distinguished by four criteria: (i) the quality and consistency of information obtained; (ii) the moral character and behaviour of the victim; (iii) the relationship between the victim and offender; and (iv) the characteristics of the offender.[8]

Table 73 Crosstabulation of Outcome by Existence of Corroborating Evidence*

(Column Percentages)

	TIME ONE		
	Corroborated	Not Corroborated	Total
Founded	93.4	92.6	93.2
Unfounded	6.6	7.4	6.8
Number of cases	122.0	68.0	190.0
Missing cases			7
		$x^2 = 0.00$	
		$p = 1.00$	

	TIME TWO		
	Corroborated	Not Corroborated	Total
Founded	92.4	80.4	88.8
Unfounded	7.6	19.6	11.2
Number of cases	131.0	56.0	187.0
Missing cases			31
		$x^2 = 4.53$	
		$p < .04$	

* Cases with corroborating evidence contained at least one of the following: forensic medical evidence, material evidence, corroborating or eyewitnesses, and physical injuries sustained by the victim.

Source: Unweighted police database

[8] Holmstrom and Burgess, The Victim of Rape, pp.41-42.

We tested a number of variables related to these four criteria in order to determine their effect on whether or not the report was considered as founded and, if founded, whether or not charges were laid. The predictor (or explanatory) variable and outcome variables were crosstabulated for each time period. Let us first consider the quality and consistency of the evidence. We had postulated that the best predictor of reporting outcome would concern whether or not the alleged offender admitted guilt to the police. We found, however, that there was no significant relationship between the offender's statement to the police and the founding decision in either time period.

Reports for which there was corroborating forensic or material evidence or witnesses were significantly more likely to be considered as founded in Time Two than uncorroborated reports ($p<.04$). In Time One, however, reports that were corroborated by material or forensic evidence, or an eyewitness, were no more nor less likely to be considered as founded than uncorroborated reports (see Table 73).

These findings are interesting, especially given that there were virtually no differences over time in the overall proportion of cases that were corroborated by forensic or material evidence or witnesses (refer back to Table 71). The fact that the crosstabulation of outcome by corroboration was significant for Time Two, but not for Time One, suggests that corroboration of the complaint has become a more important factor influencing the founding decision over time despite the 1983 legislative amendments, which explicitly dropped the corroboration requirement.

There were virtually no differences during either time period in the proportion of cases considered as founded when controlling for the type of sexual contact.[9] During Time One, cases that involved penetration may have been slightly more likely to be considered as unfounded than were reports that involved sexual touching, however, the statistical significance of this relationship was well above conventional levels ($p<.12$). In Time Two there were no discernible differences in the founding rates when controlling for the type of sexual contact.

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[9] The type of sexual contact was reclassified as sexual touching and penetration.

Table 74 Crosstabulation of Outcome by Physical Injury to the Victim

TIME ONE

	Physical Injury	No Apparent Injury	Total
Founded	93.9	92.9	93.1
Unfounded	6.1	7.1	6.9
Number of cases	33.0	155.0	188.0
Missing cases			9
		$x^2 = 0.19$	
		$p < .91$	

TIME TWO

	Physical Injury	No Apparent Injury	Total
Founded	95.8	85.1	89.2
Unfounded	4.2	14.9	10.8
Number of cases	72.0	114.0	186.0
Missing cases			32
		$x^2 = 13.06$	
		$p < .002$	

Source: Unweighted police database

If we look at whether or not the complainant was injured during the assault, it is surprising to find that this type of evidence had no bearing on outcomes in Time One. In Time Two, the founding rate for reports by wounded complainants was significantly ($p<.002$) higher than for unharmed complainants (96 versus 85 per cent), as can be seen from Table 74. We are puzzled by the incidence of reports by wounded complainants that were considered as unfounded (six per cent of Time One and four per cent in Time Two).

The changes over time (i.e., since the amendments were implemented) in the proportion of reports containing physical injuries to the complainants that were considered as founded are also statistically significant ($x^2=25.28$, $p<.001$). This may be a function of the explicit recognition of differing levels of violence included in the three levels of sexual assault defined by Bill C-127. As previously noted, the higher incidence of violence in Time Two cases is probably due to the sampling strategy we adopted.

However, we believe this finding still suggests that the incidence of violence has become a more important factor influencing the founding decision over time.

Table 75 Crosstabulations of Outcomes by Character of Victim

(Row Percentages)

TIME ONE

	Founded	Unfounded	Totals
Victim lying	69.0	31.0	29
Not suggested	97.5	2.5	161
TOTAL	93.2	6.8	190
Missing cases			7
	$x^2=27.11$, $p<.001$		
Bad moral character	88.7	11.1	9
Not suggested	94.4	5.6	179
TOTAL	96.2	3.8	184
Missing cases			9
	$x^2=0.00$, $p=1.00$		

TIME TWO

Victim lying	43.7	56.3	32
Not suggested	98.0	2.0	152
TOTAL	88.6	11.4	184
Missing cases			34
	$x^2=71.75$, $p<.001$		
Bad moral character	58.3	41.7	12
Not suggested	90.7	9.3	172
TOTAL	88.6	11.4	184
Missing cases			34
	$x^2=8.64$, $p<.004$		

Source: Unweighted police database

Having considered the types of corroborating evidence available, we can now look at the impact of the perceived character or behaviour of the victim on the founding decision. If the complainant had a past history of similar but unfounded complaints, the

report was usually considered as unfounded. Thirty-one per cent of all police reports in Time One and 56 per cent of reports in Time Two that contained the suggestion that the complaint was fabricated were labelled as unfounded, compared to two per cent of reports in which the issue was not raised ($p<.001$).

In Table 75, we also see that reports containing the police suggestion that the victim was promiscuous, of bad moral character, or had some responsibility for inciting the assault, were less likely to be considered as founded. In Time Two, almost one-half of the reports where there was a suggestion that the complainant was of bad moral character were unfounded. These findings are interesting, especially given that there were no significant differences over time in the overall proportion of cases in which the police hold this view of the victim. The fact that the crosstabulation of outcomes affected by this factor was significant for Time Two but not for Time One suggests that this has become a more important factor over time influencing the founding decision despite the changes included in the amendments regarding the admissibility of evidence regarding the victim's reputation or past sexual history.

We have limited data available on whether or not the complainant had a prior criminal record. If this was noted in the police report, we found that in the Time Two reports they were more likely to be considered as unfounded ($p<.07$). For example, 38 per cent of the Time Two reports that indicated that the victim had a prior criminal record were considered as unfounded compared with four per cent of reports that did not indicate this factor.[10] There were no statistically significant differences between reports involving a prior criminal record and those that did not in Time One.

There were also no statistically significant differences dependent upon whether or not the complainant was intoxicated at the time of the assault, although it appears that if the victim was intoxicated or under the influence of drugs during Time Two, then the report was slightly more likely to have been considered as unfounded. For example, eight per cent of Time Two reports where the victim was not intoxicated or under the influence of drugs at the time of the assault were considered as unfounded compared with 18 per cent of reports where this factor was operative ($p<.09$). In summary, these findings indicate that the demeanour and character of the witness continued to have some influence on whether or not the complaint was believed. In fact, a number of these factors appear to have become more important to the founding decision over time.

The 1983 amendments dropped the recent complaint rule. If we distinguish reports by whether or not they were made to the police within 24 hours of the incident, we find no statistically discernable impacts on founding outcomes from the timing or delay in reporting in either time period.

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[10] Because there were a large number of missing cases and we do not know whether there are systematic differences in the missing cases, this finding should be interpreted very cautiously.

The third type of factor expected to influence outcomes from reporting to the police is the relationship between the complainant and offender (see Table 76). In both time periods, assaults by strangers were more likely to be considered as founded compared to assaults by known assailants. For example, in Time One, 96 per cent of stranger assaults were considered as founded compared with 80 per cent of assaults by persons known to the victim. In Time Two, 92 per cent of stranger assaults were considered as founded compared with 86 per cent of assaults by persons previously known. This relationship was statistically significant in Time One ($p<.001$), but did not reach conventional levels of significance in Time Two ($p<.11$).

Unfortunately there are too few cases for both time periods to disaggregate in greater detail. This is primarily due to the fact that the vast majority of assaults in Vancouver appear to have been committed by strangers to the complainant, although there has been a sharp decline in the incidence of stranger assaults reported to the police over time. We did find it interesting that none of the reports in either time period involving prostitutes who were assaulted by their tricks were considered as unfounded.

Table 76 Crosstabulation of Outcome and Relationship Between Offender and the Complainant

(Column Percentages)

TIME ONE

	Previously Known	Stranger	Total
Founded	80.0	96.0	93.0
Unfounded	20.0	4.0	7.0
Number of cases	35.0	151.0	186.0
Missing cases			11

$x^2=18.75$, $p<.001$

TIME TWO

Founded	86.2	91.9	90.1
Unfounded	13.8	8.1	9.9
Number of cases	58.0	123.0	181.0
Missing cases			37

$x^2=6.13$, $p<.11$

Source: Unweighted police database

The final dimension concerns the impact of the character of the alleged offender on outcomes from reporting. We had only limited data on this dimension and it concerned whether or not there was a prior criminal record. We found no relationship between the founding decision and whether or not the offender had a prior criminal record.

In the remainder of this section we consider the factors that influenced the decision to lay charges in founded reports. Table 77 displays the distribution of founded reports by whether or not charges were laid by the crown.

During both time periods, founded reports corroborated by forensic or material evidence or by witnesses were significantly more likely to be cleared by charge than reports that were not corroborated (see Table 78). In fact, 95 per cent of Time One reports and 90 per cent of Time Two reports cleared by charge were corroborated by forensic or material evidence or witnesses.

Table 77 Clearance Rate for Founded Reports by Time Period

	TIME ONE		TIME TWO	
	Number	Percentage	Number	Percentage
Charges	20	11.3	42	25.0
No charges	157	88.7	126	75.0
TOTAL	177	100.0	168	100.0

$x^2 = 9.62$ $p < .002$

Source: Unweighted police database

The second factor that influenced the charging decision during Time Two concerned the credibility of the complainant. As can be seen from Table 79, if the police suggested the victim was lying, then the report was less likely to be cleared by charge than if the police did not make any suggestions regarding the victim's credibility. In fact, during both time periods none of the reports where the police suggested the victim was lying were cleared by charge. We do note, however, that this relationship was not statistically significant during Time One, probably due to the small number of cases in which the police made this suggestion.

No other characteristics of the complainant appeared to have influenced the decision to lay charges during either time period. For example, the victim's age, gender, prior record or whether or not the victim was intoxicated at the time of the offence were

not statistically associated with the charging decision. Similarly, the timing of the report did not appear to exert an influence. We were surprised that subsequent to the amendments, the charging decision was not apparently influenced by whether or not the police had made suggestions regarding the victim's reputation or moral character, especially given the influence this factor had on the founding decision.

Table 78 Crosstabulation of Charging Decision and Corroboration by Time

(Column Percentages)

TIME ONE

	Corroborated	Not Corroborated	Total
Charged	16.7	1.6	11.3
Not Charged	83.3	98.4	88.7
Number of cases	114.0	63.0	177.0

$x^2 = 7.76$, $p < .006$

TIME TWO

Charged	90.2	9.8	25.0
Not charged	67.2	32.8	75.0
Number of cases	72.9	27.1	166.0
Missing cases			2

$x^2 = 7.17$, $p < .008$

Source: Unweighted police database

Table 79 Crosstabulation of Charging Decision and Suggestion Victim Lying by Time

(Column Percentages)

	Victim Lying	Not Suggested	Total
TIME ONE			
Charged	--	12.7	11.3
Not charged	100.0	87.3	88.7
Number of cases	20.0	157.0	177.0
		$x^2 = 1.74$, $p < .19$	
TIME TWO			
Charged	--	27.5	25.2
Not charged	100.0	72.5	74.8
Number of cases	14.0	149.0	163.0
Missing cases			5
		$x^2 = 3.79$, $p < .06$	

Source: Unweighted police database

The relationship between the victim and assailant influenced the charging decision in Time Two, but appears to be unrelated to the charging decision in Time One (see Table 80). During Time Two, 19 per cent of the assaults by strangers were cleared by charge compared with 40 per cent of the assaults by persons previously known to the victim ($p < .03$). The decrease over time in the proportion of reports that were not cleared by charge involving persons previously unknown to the victim is statistically significant ($p < .05$). This change may be related to the lower overall incidence of reports of stranger assaults during Time Two. It may be that the stranger assaults reported to the police in Time Two were more likely to include identification of the assailant and thus there is a higher rate of charging.

Table 80 Crosstabulation of Relationship of Assailant to Victim and the Charging Decision by Time Period

(Column Percentages)

	Stranger	Known	Total
TIME ONE			
Charged	9.7	21.4	11.6
Not charged	90.3	78.6	88.4
Number of cases	145.0	28.0	173.0
Missing cases			4
	$x^2=4.98$, $p<.29$		
TIME TWO			
Charged	18.6	40.0	25.2
Not charged	81.4	60.0	74.8
Number of cases	113	50	163.0
Missing cases			5
	$x^2=9.13$, $p<.03$		

Source: Unweighted police database

Before turning to look at the outcomes of cases at the court level, we look at one final variable: the initial police classification of the report according to the Criminal Code, and its relationships to founding and charging rates.

In Table 81, we display the tripartite outcomes by the initial police classification of the report. In total, ten per cent of Time One reports and 22 per cent of Time Two reports were cleared by charge. Seven and eleven per cent, respectively, were considered as unfounded.

During Time One, the more serious rape and attempted rape reports were marginally more likely to be considered unfounded than were reports of indecent assaults ($p<.09$). On the other hand, reports involving rape or attempted rape that were founded were marginally more likely to be cleared by charge than were reports involving indecent assaults.

Table 81 Crosstabulation of Outcomes by Initial Police Classification

(Column Percentages)

TIME ONE

	Rape/ Attempted Rape	Indecent Assault Female	Indecent Assault Male	Total
Unfounded	9.5	3.1	22.2	6.8
Cleared by charge	13.1	9.3	--	10.5
Cleared otherwise	77.3	87.6	77.8	82.6
Number of cases	84.0	97.0	9.0	190.0
Missing cases	4.0	3.0	-	7.0

$x^2 = 28.15, p < .06$

TIME TWO

	Level III	Level II	Level I	Total
Unfounded	--	3.7	15.5	11.1
Cleared by charge	30.8	27.8	18.9	22.2
Cleared otherwise	69.2	68.5	65.6	66.7
Number of cases	13.0	54.0	122.0	189.0
Missing cases	-	7.0	22.0	29.0

$x^2 = 30.12, p < .003$

Source: Unweighted police database

Subsequent to the amendments, we found that Level I reports were more likely to be considered unfounded than were Level II or Level III reports. In fact, none of the Level III reports were considered unfounded. In a similar fashion, the clearance rates were marginally higher ($p<.09$) for reports involving Levels II or III than for Level I reports. We believe these differences stem from the quality of evidence available. Incidents that would be classified as Levels II or III are more likely to have corroboration such as evidence of physical injuries than are incidents classified as Level I.

4.3 Changes in Court Outcomes

In this section, we consider the impacts of the legislative amendments on the extent of plea bargaining, the conviction rates for sexual offences, and the lengths of jail sentences handed down to convicted offenders.

4.3.1 Changes in Plea Bargaining

Three levels of sexual assault were created by the new legislation in order to recognise the variety of aggravating factors associated with a sexual assault. Some legal observers speculated that one impact of the law would be an increased incidence of plea bargaining. Reactions among crown counsel regarding perceived changes in the incidence of plea bargaining varied considerably. Three crown counsels perceived a decrease, which was attributed primarily to the high public profile of sexual assault cases and the pressure on the crown's office to follow cases through. Two crown counsels perceived that the incidence of plea bargaining had increased due to the greater flexibility allowed by the new legislation, while four crown counsel observed no changes.

The defence lawyers interviewed were also divided on whether or not the amount of plea bargaining had increased or decreased since the new law was introduced. Two of the five defence lawyers thought that the amount of plea bargaining had increased, while two perceived no changes and one believed that the proportion of cases being plea bargained had decreased.

The majority of crown counsels remarked that plea bargaining occurred less frequently in sexual assault cases than in other equally serious crimes against the person. This perception was echoed by one-half of the defence lawyers interviewed. Three crown and two defence lawyers believed that plea bargaining for sexual assault and other equally serious crimes was about the same. Only one defence lawyer perceived that plea bargaining occurred more frequently for sexual assault than other equally serious crimes.

We also asked crown counsels whether the creation of three separate levels of sexual assault provided sufficient flexibility for negotiating cases. The crown counsels interviewed almost unanimously responded in the affirmative. Crown counsel remarked that this flexibility was being exercised in cases where the accused pleaded guilty to Level I charges and there was evidence to sustain a Level II charge.

4.3.2 Attrition of Cases Through the Criminal Justice System

We begin this sub-section by summarising the attrition of reported incidents as they progress through the criminal justice system, based on the (unweighted) police/crown database. Table 82 displays the number of reports made during 1981/82

and 1984/85 according to the initial police classification of the offence. We also indicate the charges that were pursued by the crown for the reports sampled. Finally, the exhibit displays the number of cases that reached final adjudication.

As can be seen from Table 82, just less than 11 per cent of the reports made to the police in Time One and 20 per cent of the reports in Time Two had charges laid by the crown. This difference over time is statistically significant ($p < .02$) suggesting that the amendments have increased the likelihood of charges being laid by the crown. Similarly, the differences in the numbers of cases that went to trial and reached final adjudication during the two time periods were statistically significant.

During Time One, only 12 of the 88 reports of rape or attempted rape included in our sample reached the crown. Of these, nine were committed for trial and eight reached final adjudication. Of the 100 reports included in our sample regarding indecent assaults against females, only nine reached the crown. Of these, eight were committed for trial and reached final adjudication. None of the nine reports of indecent assaults against males were charged by the crown.

In Time Two, four of the thirteen aggravated sexual assaults (Level III) reported to the police in 1984 and 1985 were charged by the crown, committed for trial and reached final adjudication. Similarly, 15 of the 61 sexual assaults involving bodily harm, use of a weapon or threats to a third party (Level II) were charged by the crown. One of these was dropped before the preliminary hearing and a second was withdrawn during the trial. Regarding Level I sexual assaults, 24 of the 144 reports included in our Time Two sample were charged by the crown. Of these, 18 were committed for trial and reached final adjudication.

Table 82 Attrition of Reported Incidents Through the Criminal Justice System

	Number of Reports to Police from Sample	Number of Reports Pursued by the Crown	Number of Cases Committed for Trial	Number of Cases Reaching Final Adjudication
Time One				
Rape/attempted rape	88	12	9	8
Indecent assault (female)	100	9	8	8
Indecent assault (male)	9	-	-	-
TOTAL	197	21	17	16
Time Two				
Level III - aggravated	13	4	4	4
Level II - bodily harm, weapon, party to	61	15	14	13
Level I - simple	144	23	18	18
TOTAL	218	42	36	35

Source: Unweighted police database.

Our findings regarding the attrition of cases involving Levels II and III sexual assaults are based upon a census of these reports during 1984 and 1985. Thus, the fact that approximately 31 per cent of Level III assaults were committed for trial and reached final adjudication, while only about 23 per cent of the Level II assaults were committed for trial represents a significant difference (i.e., all differences between census populations are significant).

Significantly higher proportions of Level II and III cases were committed for trial than were cases involving Level I sexual assaults. Only 12.5 per cent of the Level I assaults were committed to trial and reached final adjudication. The fact that sexual assaults classified as Levels II or III involve more serious offences than those classified as Level I probably explains the higher rate at which they are committed for trial.

Table 83 Cases Committed for Trial by the Level of Court

	Court Involved					
	Provincial (Summary)	Provincial (Judge)	County (Judge)	County (Jury)	Other	Total
Time One						
Rape/attempted rape	-	1	5	3	-	9
Indecent assault (female)	2	1	3	2	-	8
TOTAL TIME ONE	2	2	8	5	-	17
Time Two						
Level III - aggravated	-	-	2	2	-	4
Level II - bodily harm, weapon, party to	-	2	4	7	1	14
Level I - simple	3	5	5	5	-	18
TOTAL TIME TWO	3	7	11	14	1	36
TOTAL	5	9	19	19	1	53

Source: Unweighted police database.

Table 83 presents the level of court involved for the 53 cases in our sample that were committed for trial in Times One and Two. During Time One, approximately three quarters of the cases in our sample were heard in County Courts. Just less than one-half were heard by a judge alone, while just over one-quarter were jury trials. During Time Two, approximately two-thirds of the cases were heard at County Courts. Approximately 40 per cent were jury trials, while just less than one-third were heard by a judge at the County Court.

4.3.3 Changes in Conviction Rates

Table 84 presents the final court outcomes broken down by the most serious charge. During Time One, nine of the 17 cases committed for trial (53 per cent) ended in conviction. Similarly, in Time Two, 20 of the 36 cases committed for trial (56 per cent) ended in conviction.

Table 84 Final Court Outcome by Most Serious Charge

(Number of Cases)

	Total Number of Reports From Sample	Cases Committed for Trial	Cases Withdrawn Before Adjudication	Convicted[11]	Not Convicted[12]
Time One					
Rape/attempted rape	88	9	1	4	4
Indecent assault (female)	100	8	-	5	3
TOTAL	188	17	1	9	7
Time Two					
Level III	13	4	-	1	3
Level II	61	14	1	10	3
Level I	144	18	-	9	9
TOTAL	218	36	1	20	15

Source: Unweighted police database

Table 85 displays a summary of the attrition rates for cases as they move through the criminal justice system. The exhibit presents the (percentage) rates at which charges were laid, cases were committed for trial and cases ended in conviction.

During Time One, cases involving rape or attempted rape had the highest charging rate. Cases involving indecent assaults against females had a slightly lower charging rate but were more likely to be committed for trial and to end in conviction. None of the cases involving indecent assaults against males were charged thus they were neither committed to trial nor convicted.

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[11] Convicted includes guilty plea, guilty as charged and guilty to a lesser charge.

[12] Not convicted includes dismissal, acquittal and unable to reach a verdict.

Table 85 Summary of Attrition Rates[13]

(Percentages)

	Rate at Which Charges are Laid	Rate at Which Cases are Committed for Trial	Rate of Conviction	Total Number of Reports
Time One				
Rape/attempted rape	13.6	75.0	44.4	88
Indecent assault (female)	9.0	88.9	62.5	100
Indecent assault (male)	0.0	0.0	0.0	9
Average time one	10.7	81.0	52.9	197
Time Two				
Level III	30.8	100.0	25.0	13
Level II	24.6	93.3	71.4	61
Level I	16.7	78.3	50.0	144
Average time two	19.7	85.7	55.6	218

Source: Unweighted police database

During Time Two, the charging rates showed a significant increase over Time One for all three levels of sexual assault. The highest rates for charging involved aggravated sexual assaults. The differences between Time One and Time Two in the proportions of cases committed for trial were statistically significant.

It was interesting that the highest rate at which cases were committed for trial and convicted was for cases involving sexual assault - Level II. In the following section we examine in greater detail the cases that were committed for trial and ended in

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[13] The rate at which charges are laid is calculated by dividing the number of reports in which the crown laid charges by the total number of reports (broken down by classification) in our sample. The rate at which cases are committed for trial is calculated by dividing the number of cases that reached court by the number of cases in which charges were laid. The conviction rate is calculated by dividing the number of cases ending in conviction by the total number of cases committed for trial.

adjudication. This profile should provide clearer indications of the evidentiary factors that affected conviction rates by charge.

4.4 Factors Affecting Court Outcomes

Throughout the remainder of this chapter, we examine the differences between cases ending in conviction and those cases that were acquitted, dismissed or withdrawn at final adjudication. In particular, we profile the number and types of witnesses and the types of evidence presented at each trial.

4.4.1 Profile of Time One Cases

Table 86 presents a profile of the Time One cases that ended in conviction. Three of the indecent assault and one of the rape cases involved guilty pleas by the defendants. Two cases of rape involved multiple victims. In one case, the defendant was classified as a dangerous offender and given an indeterminate sentence of imprisonment. In the other case involving multiple victims, the defendant was sentenced to 15 months in jail and one year probation.

For the three cases involving indecent assaults against females where the defendants pleaded guilty, the jail terms were suspended. Similarly, in the rape case where the defendant pleaded guilty, the jail term was only five months. In contrast, the jail terms ranged from 15 months to an indeterminate length for the rape cases where the defendants were found guilty.

Table 86 Profile of Time One Cases Ending in Conviction

Most Serious Charge	Number and Types of Witnesses	Types of Evidence	Final Outcomes
Indecent assault (female)	Victim Eyewitness	Victim statement of assault Witnessed incident	$100 fine 4 months jail
Indecent assault (female)	None	Guilty plea	3 months jail, suspended 36 months probation
Indecent assault (female)	2 police	Victim statement of assault Police evidence Police saw assault	6 months jail, suspended
Indecent assault (female)	None	Guilty plea	1 month jail, suspended 3 months probation
Indecent assault (female)	None	Guilty plea	1 month jail, suspended
Rape/attempted rape	4 victims	Victims' statements of assault Corroboration Victim impact statements	Indeterminate sentence
Rape/attempted rape	2 victims 6 police Victim's friend Defendant's friend	Victims' statement of assault Police evidence Character witnesses	15 months jail and 12 months probation
Rape/Attempted rape	Victim 7 police Eyewitness Defendant's friend Character witness	Victim statement of assault Police evidence Witnessed incident	48 months jail
Rape/Attempted rape	None	Guilty plea	5 months jail

Table 87 presents a profile of the Time One cases that ended in dismissal or acquittal. Two of the cases involving indecent assaults against females and four cases involving rapes or attempted rapes were dismissed for lack of evidence. The victims did not testify in five of these cases, while in the sixth case victim's testimony and medical evidence presented were deemed to be insufficient for conviction.

Table 87 Profile of Time One Cases Not Convicted

Most Serious Charge	Number and Types of Witnesses	Types of Evidence	Final Adjudication
Indecent assault (female)	None	- Dismissed	
Indecent assault (female)	None	- Dismissed	
Indecent assault (female)	2 Medical	Psychiatric evaluations	Defendant confined to mental institution
Rape/attempted rape	None	- Dismissed	
Rape/attempted rape	None	- Dismissed	
Rape/attempted rape	None	- Dismissed	
Rape/attempted rape	Victim Police	Victim statement of assault Police evidence	- Dismissed

In the final case involving an indecent assault against a female, the court found the defendant not guilty by reason of insanity. The victim did not testify, nor did the police. The evidence was limited to the psychiatric evaluations that found that the defendant was fit to stand trial, but had been psychotic at the time of the offence. The defendant was confined to a psychiatric institution for an indeterminate period. Comparing the profiles of cases that ended in conviction with those that did not, the major differences appear to stem from the volume of evidence presented and whether or not the victim testified. Also, two of the cases ending in conviction had eyewitnesses to the incident. In a third case ending in conviction, a police officer had witnessed the assault.

4.4.2 Profile of Time Two Cases

Table 88 presents a profile of Time Two cases that ended in conviction. One of the most striking findings is that seven of the nine cases involving Level I sexual assaults and all but three of the Level II sexual assault cases included testimony by corroborating or eyewitnesses.

Table 88 Profile of Time Two Cases Ending in Conviction

Most Serious Charge	Number and Types of Witnesses	Types of Evidence	Final Outcomes
Sexual assault (Level I)	Victim Police 2 Victims Friends	Statement of assault Police testimony Saw evidence	$450 fine 9 months probation
Sexual assault (Level I)	Victim Police First person disclosed	Statement of assault Police testimony Testimony about assailant	$500 fine 24 months probation
Sexual assault (Level I)	Victim 2 police Eyewitness	Statement of assault Police testimony Witness to incident	7 months jail $250 fine
Sexual assault (Level I)	Victim 2 Police Eyewitness First person disclosed Witness to incident	Statement of assault Police testimony Police saw assault Testimony about assailant	Presentencing report 36 months probation
Sexual assault (Level I)	Victim Police 3 eyewitnesses	Statement of assault Police testimony Witnesses to incident	Presentencing report 42 months jail

Table 88 (Cont'd)

Most Serious Charge	Number and Types of Witnesses	Types of Evidence	Final Outcomes
Sexual assault (Level I)	Victim 3 police Medical First person disclosed	Statement of assault Police testimony Police saw assault Medical report Testimony about assailant	15 months jail 24 months probation
Sexual assault (Level I)	Victim 2 police Corroborating Eyewitness	Statement of Police testimony Police saw assault Testimony about assailant	$500 fine
Sexual assault (Level I)	Victim 2 police Eyewitness Witness to incident	Statement of assault Police testimony	$400 fine
Sexual assault (Level I)	Victim 7 police Medical First person disclosed	Statement of assault Police testimony Police saw assault Medical report Testimony about assailant	Presentencing report 168 months jail
Sexual Assault (Level II)	Victim Police Medical Victim's friend	Statement of assault Police testimony Testimony about assailant Friend saw evidence	12 months jail

Table 88 (Cont'd)

Most Serious Charge	Number and Types of Witnesses	Types of Evidence	Final Outcomes
Sexual assault (Level II)	Victim Police Medical First person disclosed	Statement of assault Police testimony Testimony about assailant Testimony about seeing evidence	72 months jail
Sexual assault (Level II)	Victim Police Medical Defendant's friend Witness to incident	Statement of assault Police testimony Medical report	48 months jail
Sexual assault (Level II)	Victim 3 police Medical	Statement of assault Police testimony Police saw assault Medical report	18 months jail
Sexual assault (Level II)	5 police	Police testimony Police saw assault	Presentencing report 36 months jail
Sexual assault (Level II)	Victim 2 police Medical	Police testimony Medical report	12 months jail
Sexual assault (Level II)	Victim 6 police	Statement of assault Police testimony Police saw assault	72 months jail
Sexual assault (Level II)	Victim 2 police	Statement of assault Police testimony Police saw evidence	Presentencing report 36 months probation

Table 88 (Cont'd)

Most Serious Charge	Number and Types of Witnesses	Types of Evidence	Final Outcomes
Sexual assault (Level II)	Victim 7 police Medical First person disclosed	Statement of assault Police testimony Medical report Testimony about assailant	48 months jail
Sexual assault (Level II)	2 victims 2 police	Statements of assaults Police testimony Witnesses evidence	144 months jail
Aggravated sexual assault (Level III)	Victim 2 police Medical First person disclosed	Statement of assault Police testimony Police saw assailant Medical report Testimony about assailant	Presentencing report 72 months jail

Table 89 presents a profile of Time Two cases that did not end in conviction. Only one of the cases involving Level I sexual assault included a corroborating witness, while two cases included testimony by police who had witnessed the defendant physically assaulting the victim.

Two of the three cases involving Level II assaults included witnesses to the incidents. Similarly, two of the three aggravated sexual assaults included police officers who had seen the defendant physically assaulting the victim. Both of these defendants were acquitted by juries.

Table 89 Profile of Time Two Cases NOT Convicted

Most Serious Charge	Number and Types of Witnesses	Types of Evidence	Final Outcomes
Sexual assault (Level I)	Victim 2 police Medical First person disclosed	Police testimony Medical report Testimony about assault and assailant	Acquittal
Sexual assault (Level I)	2 police Corroborating witness Medical	Police testimony Testimony about assailant Medical report	Withdrawn
Sexual assault (Level I)	Victim 4 police Victim's friend	Statement of assault Police testimony Police witnessed assault Testimony about assailant	Withdrawn
Sexual assault (Level I)	Victim 6 police Medical	Statement of assault Police testimony Police witnessed assault Medical report	Withdrawn after jury unable to reach verdict
Sexual assault (Level I)	None	None	Dismissed
Sexual assault (Level I)	Victim 2 police Victim's friend	Statement of assault Police testimony Knowledge of defendant	Dismissed, lack of evidence
Sexual assault (Level I)	Victim 2 police	Statement of assault Police testimony	Dismissed
Sexual assault (Level I)	Victim	Statement of assault	Dismissed, lack of evidence

Table 89 (Cont'd)

Most Serious Charge	Number and Types of Witnesses	Types of Evidence	Final Outcomes
Sexual assault (Level I)	Victim Police Victim's friend	Statement of assault Police testimony Testimony about victim	Dismissed
Sexual assault (Level II)	Victim 3 police Eyewitness 2 medical Expert	Statement of assault Police testimony Witness to assault Medical reports	Withdrawn
Sexual assault (Level II)	Victim 4 police Medical First person disclosed Victim's friend Defendant's friend	Statement of assault Police testimony Police witnessed assault Medical report Testimony about assailant Testimony about defendant	Acquittal
Sexual assault (Level II)	None	None	Case transferred to family court
Aggravated sexual assault (Level III)	Victim 5 police	Statement of assault Police testimony	Dismissed
Aggravated sexual assault (Level III)	Victim 6 police 2 corroborating witnesses Medical	Statement of assault Police testimony Police witnessed assault Testimony about assailant Medical report	Acquittal
Aggravated sexual assault (Level III)	Victim 4 police Medical	Statement of assault Police testimony Police witnessed assault Medical report	Acquittal

Five of the cases involving simple sexual assaults were dismissed either for lack of evidence or on technical grounds. Three cases were withdrawn by the crown due to a lack of evidence, while the final case ended in acquittal. One of the Level II sexual assaults was transferred to family court by the judge. One case was withdrawn by the crown and one case ended in acquittal. One case involving aggravated sexual assault was dismissed because of lack of evidence. The other two cases ended in acquittals.

4.4.3 Changes in Factors Affecting Final Court Outcomes

In this final section, we examine the relationships between offence and offender characteristics and final court outcomes. Table 90 presents those factors found to be significantly related to the final court outcomes (i.e., convicted or not convicted).

Physical force was used on victims in seven cases during Time One. Three of the seven cases ended in conviction. In all three of these cases, the victims were also physically injured.

In nine Time One cases, physical force was not used on the victims. Six of these cases ended in conviction. In terms of odds ratios, the probability of a case ending in conviction was higher during Time One if physical force was not used on the victim. However, if physical force was used, and the victim was physically injured, the probability of conviction increased dramatically.

Physical force was used on victims in 30 cases during Time Two. Sixteen of these cases ended in convictions. In ten of the 16 cases ending in conviction, the victim was also physically injured.

If we look at the differences over time, there have been interesting but surprising changes. During Time One, 43 per cent of the cases where physical force was used on the victim ended in conviction compared with 53 per cent of the Time Two cases. In contrast, all of the Time One cases where the victims were injured ended in conviction compared with just over one-half (53 per cent) of the Time Two cases.

Turning to those cases during both time periods where physical force was not used on the victim, the conviction rate was marginally higher in Time One than in Time Two (67 per cent and 60 per cent, respectively). In contrast, the conviction rate was higher for cases in Time Two than in Time One if there were no physical injuries to the victim (56 per cent and 46 per cent, respectively).

The third factor significantly related to final court outcomes concerned whether or not a weapon was used during the assault. During Time One, the conviction rate was marginally higher if the defendant did not use a weapon during the assault. In contrast

and surprisingly, during Time Two, there was no overall difference in the conviction rates based on whether or not the defendant had used a weapon during the assault.[14]

The fourth and fifth factors significantly related to final court outcomes concern selected characteristics of the offender. During Time One, 33 per cent of the cases where the assailant used drugs or alcohol ended in conviction compared with 56 per cent of Time Two cases. In contrast, 62 per cent of the Time One cases where the assailant had not used drugs or alcohol ended in conviction compared with 53 per cent of the Time Two cases.Thus, we can say that during Time One, the conviction rate was greater for cases where the assailant had not used drugs or alcohol. During Time Two, however, there was virtually no difference in the rate of conviction regardless of whether or not the assailant had been under the influence of drugs or alcohol. This represents a significant change over time.

Whether or not the assailant was previously known to the victim was found to have a bearing on the rates of conviction during both time periods. During Time One, the conviction rate was much greater if the defendant was a stranger, rather than known to the victim (70 per cent and 33 per cent, respectively). In contrast, during Time Two, the conviction rate was marginally higher if the defendant was previously known to the victim rather than a stranger (59 per cent and 50 per cent, respectively).

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[14] Of course broken down by the police classification of the Time Two assault, the conviction rate increases dramatically for Level II assaults when controlling for use of a weapon.

Table 90 Factors Significantly Related to Final Court Outcomes

	Time One			Time Two		
	Convicted	Not Convicted	Total	Convicted	Not Convicted	Total
Physical Force Used on Victim						
Yes	3	4	7	16	14	30
No	6	3	9	3	2	5
TOTAL	9	7	16	19	16	35
Victim Physically Injured						
Yes	3	-	3	10	9	19
No	6	7	13	9	7	16
TOTAL	9	7	16	19	16	35
Use of a Weapon						
Yes	2	2	4	7	6	12
No	7	5	12	12	10	22
TOTAL	9	7	16	19	16	35
Assailant Use Drugs						
Yes	1	2	3	10	8	18
No	8	5	13	9	8	17
TOTAL	9	7	16	19	16	35
Relationship to Victim						
Yes	7	3	10	9	9	18
No	2	4	6	10	7	17
TOTAL	9	7	16	19	16	35
Other Offences						
Yes	2	2	4	2	4	6
No	7	5	12	17	12	29
TOTAL	9	7	16	19	16	35

Source: Unweighted police database

Looking at differences over time, strangers to the victim were much more likely to be convicted during Time One than during Time Two (70 per cent and 50 per cent, respectively). In contrast, the rate of conviction was much greater during Time Two than during Time One if the assailant was previously known to the victim (59 per cent and 33 per cent respectively).

The final factor we examined concerned the occurrence of other offences at the same time as the assault. During both time periods, the conviction rate was greater if there were no accompanying offences. During Time One, one-half of the cases where other offences occurred at the same time ended in conviction, while 58 per cent of the cases where there were no accompanying offences had this same outcome.

During Time Two, one-third of the cases where there were accompanying offences ended in conviction, as did 59 per cent of cases where this was not a factor. Looking at differences over time, the rate of conviction for cases where there were accompanying offences was greater during Time One than during Time Two (50 per cent and 33 per cent, respectively).

5.0 TREATMENT OF THE OFFENDER

In this chapter, we explore perceptions regarding how well or poorly victims of sexual assault are handled by the various agencies. We begin by describing current responses to complaints and how these have altered over the past few years by agency. We then look at whether practitioners believe that the felt experience of the victim has improved as a result of the amendments.

5.1 Institutional Response to Victims

5.1.1 Treatment by the Hospital

According to respondents from the Shaughnessy Hospital sexual assault assessment project team, the doctor on call arrives at the hospital within one-half hour of receiving a call from the hospital. The Shaughnessy Hospital provides a "special" room where victims of sexual assault can be treated without the presence of other emergency visitors.

Victims receive the forensic examination only if they consent to the procedure. If the victim consents, the evidence is collected regardless of whether or not the victim intends to press charges.

According to one doctor interviewed, most of her patients over the past year had the forensic evidence collected. Two of the three doctors thought that the percentage of victims who had the forensic evidence collected in the past year had significantly increased.

In the opinion of the doctors interviewed at the Shaughnessy Hospital, reluctance by victims of sexual assault to have the examination stems from an unwillingness to press charges. They have a fear of the assailant and a distrust of the court system. One doctor attributed the low level of reporting of sexual assaults among aboriginal and East Indian women, due primarily to poor self-image and cultural images of women in these ethnic groups.

Other cited factors regarding victim reluctance in having forensic evidence collected included the complexity of the consent process (e.g., separate consent is required for the examination, actual evidence collection and transfer of evidence to police) and the physical discomfort of the examination.

Our respondents from the Shaughnessy hospital told us that victims of sexual assault are informed about the Women Against Violence Against Women Centre upon arrival. Victims are encouraged to contact this network. The decision, however, is strictly made by the victim (i.e., no formal protocol exists for the hospital to contact

WAVAW directly). One doctor stated that there had been an increased level of cooperation with WAVAW over the past five years. Another doctor remarked that there had been an increase in the number of victims arriving at the hospital accompanied by WAVAW workers.

Doctors were also asked whether they believed that a forensic examination could further traumatise victims by appearing to be a repeat of the original assault. Two doctors thought that further traumatisation for the victim was a rare occurrence. A third doctor thought that there was substantial physical and psychological trauma involved, but that this had improved over time due to efforts made to give the victim as much control over the examination situation as possible (i.e., the woman might not consent to each portion of the examination and certain parts can be omitted, if necessary).

Besides medical treatment and the collection of forensic evidence, the Shaughnessy team also provides victims of sexual assault with referrals for long-term counselling and follow-up medical care.

5.1.2 Treatment by the Women Against Violence Against Women (WAVAW) Centre

The WAVAW Centre is staffed with 30 volunteer counsellors who have had specific training in how to assist victims of recent or past incidents of sexual assault. The counsellors handle much of their caseload over the telephone, but also offer accompaniment to the hospital, police and courts as well as one-to-one counselling and referrals to other agencies.

WAVAW's policy is to maintain a neutral stance with respect to reporting to the police or pursuing a case through the courts. They believe that victims should be allowed to decide for themselves based on a realistic appraisal of the advantages and disadvantages of various courses of action. They provide this information and support victims in whatever decisions they decide to take.

The majority of our respondents at WAVAW reported that they always describe the current legislation to victims since they think that it is important for women to have this information in order to help them choose a course of action. Two of the workers reported that they provide this information when relevant (i.e., when the victim has decided to press charges and needs this information as preparation for the court process). WAVAW workers also discuss the possible disadvantages of pursuing a criminal investigation with victims. The following problems were cited as issues that could be raised when counselling a victim on whether or not to pursue an investigation: the likelihood of being asked questions that could seem intrusive; the possibility of encountering a less than sympathetic investigating officer; and , according to one counsellor, the possibility that the victim will be asked to take a polygraph test.

WAVAW workers describe the type of support that the Centre can provide (e.g., accompaniment to the police station and willingness to be present during the police interview). Regarding the court process, WAVAW workers provide victims with information about what the various states of the process involve, how long a period of time a trial could take, what the crown prosecutor and defence lawyer may do or say in court and the frustrations that might be encountered.

According to the WAVAW workers interviewed, just over one-third of callers were thought to report the assault to the police. Two workers thought that the level of reporting to the police had increased over the past few years. One worker thought there had been a decrease in the level of reporting to police and two thought their had been no change in the level of reporting to police; two also thought there had been no change in the level of reporting. Two workers were uncertain. High levels of reluctance to report sexual assault incidents to the police were also found in a National Survey to determine the extent of victimization from various types of crimes.[1] According to this study, only 38 per cent of victims who had been sexually assaulted (in 1981) reported the incident to the police.[2]

During the interviews, WAVAW workers suggested a variety of factors that constrain reporting to the police. These include fear of the assailant, fear that they will be disbelieved, and feelings of doubt that the final outcome will be decided in their favour (four of six workers cited each of the above reasons). Other reasons cited for low reporting rates were fear of going to court and fear of publicity (cited by two of six and one of six workers, respectively). These reasons are consistent with the findings of the Canadian Urban Victimization Survey (i.e., predominant were feelings that reporting would be futile, fear of a negative attitude from police or courts and fear of retaliation).

5.1.3 Treatment by the Criminal Justice System

There are, at present, on the Vancouver police force, six specialised sexual assault squad members and one supervisor. These officers have received specialised training regarding the handling and investigation of both sexual assault and sexual abuse cases. According to the police interviewed, training for the investigation of sexual assault complaints focuses on the psychological impacts of sexual assault on victims. Also, one officer reported that he had attended discussion groups sponsored by the sexual assault centre on the needs of sexual assault victims.

According to the crown counsel interviewed, less than ten per cent of complainants withdraw complaints after charges have been laid. The major reasons

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[1] The Canadian Urban Victimization Survey was conducted in 1982 in seven Canadian cities by the Solicitor General with the assistance of Statistics Canada.

[2] See Bulletin; "Victims of Crime", p.7.

cited for withdrawing complaints included fear of going to court, fear of the assailant, lack of evidence and discouragement at the lengthy court process. Nothing is done in most cases when the complainant withdraws the complaint; however, according to one crown counsel, a public mischief charge is considered when the complaint is discovered to have been fabricated. From the perspective of the WAVAW workers, the primary reason for withdrawing the complaint is fear of the assailant (cited by each worker). Other reasons included fear of going to court and lack of family support.

When asked about the preparation of complainants for trial, the crown counsel interviewed stated that meetings with complainants were held in all cases. The length of time taken for these interviews appears to vary considerably, since responses from crown counsel on this question ranged from estimates of two to eight hours.

After the Crown Charge Approval Board approves the laying of charges, a crown prosecutor is assigned to the case. The crown's policy is to have vertical prosecution (i.e., the same prosecutor from the initial interview until the final adjudication) whenever possible. This is especially true in cases involving younger complainants. The crown counsel's office has also made a point of assigning specially trained crown counsel to cases involving young witnesses. Three crown attorneys have been trained in interviewing techniques and preparing young witnesses for court. Three other crown attorneys noted that training in interviewing techniques, especially with young complainants, would have been useful to them. Two crown attorneys recognised a need for training in the area of establishing a trusting relationship with complainants, while one crown attorney thought that more training concerning the collection of forensic evidence would have been useful. Finally, we note that the crown will request that the courtroom be cleared of spectators, during the complainant's testimony, if the complainant is very young or would be so upset by spectators that the testimony would be inhibited. Although this request is rarely make according to the crown counsels interviewed, there are times when testifying in front of observers is too intimidating or the facts could cause extreme embarrassment for the complainant. When asked the circumstances under which complainants would be allowed to give evidence in camera, three of the judges responded that this should only be allowed in the case of very young witnesses and where the judge is satisfied that exclusion was necessary.

5.2 Attitudes of Sexual Assault Victims

In this section we present the attitudes of callers to the "hotline" regarding their treatment by the criminal justice system and related agencies. In total, we spoke with sixteen respondents.

5.2.1 Experiences with Medical and Victim Support Services

Twelve of the sixteen respondents characterised the reactions of the first person they disclosed the assault to as supportive. The other four respondents said that the people to whom they first disclosed the assault had been unsupportive.

Ten of the sixteen respondents used the services of a sexual assault centre. The majority of the respondents were seeking advice on what to do, what they could expect if they reported the incident and emotional support or counselling. A minority of the respondents were seeking accompaniment to the hospital, police or court. Five of the respondents were extremely satisfied with the services and/or help they received. A male respondent was upset that the centre he contacted would not offer him any help or advice because of his gender. Another respondent was upset because of a lack of available follow-up counselling by the centre. A third respondent felt that sexual assault centres should offer some sort of immediate emergency shelter for victims of sexual assault.

Eleven respondents received medical treatment either at a hospital or from a family physician. Six of these respondents had medical evidence of the sexual assault collected by a physician. Six respondents were satisfied with the way they were treated by the medical staff, while two were dissatisfied and three were neither satisfied nor dissatisfied. None of the respondents complained of excessive delays while waiting for medical treatment. The respondents who were dissatisfied with the way they were treated noted either what they believed were judgments on the part of the medical personnel or cold, uncaring attitudes.

5.2.2 Experience with the Criminal Justice System

Fourteen of the sixteen respondents reported the sexual assaults to the police. Seven of the respondents were interviewed by male police officers, one was interviewed by a female officer and six were interviewed by both male and female police officers.

Five respondents related that they were satisfied with the way police treated them, while four were dissatisfied and one was neutral. Four respondents characterised the police as sympathetic to them during the interview, while two felt that the police were unsympathetic or judgmental. Seven respondents related that they had been asked some questions that probed into parts of their lives that were unrelated to the assault or catching the assailant. Four respondents disagreed, while one was neutral.

Eleven of the fourteen cases reported to the police were considered as founded. In seven cases, charges were laid under section 246.1 (Level I sexual assault) against an assailant. Three of the respondents indicated that they were dissatisfied with the charges that had been laid against their assailant. One respondent was satisfied with the charges.

Two of the respondents felt that the crown counsel in charge of their case had done a good job of preparing them for court. Two other respondents indicated that the crown prosecutor had neither done a good job nor a poor job, in this respect. All four respondents, however, indicated that they were dissatisfied with the efforts make by the crown to deep them informed about the progress of their cases. Overall, two respondents felt that the crown prosecutor had handled their case well in court, while one respondent was dissatisfied with what she had observed.

Two of the seven cases that went to trial ended with verdicts of guilty as charged, three ended with verdicts of guilty to a lesser charge (common assault) and two ended with verdicts of not guilty. Two complainants were satisfied with the final verdicts, while four were not. The other complainant did not express a view on this matter. Only three respondents commented on the sentences handed down to their assailants. All three were dissatisfied with the sentences, feeling that the sentences did not reflect the gravity of the crime committed against them.

Six of the respondents remarked that, at the time of the assault, they had been aware of the 1983 legislative amendments included in Bill C-127. Only one respondent indicated that the new law had encouraged her to report the sexual assault. Similarly, only one respondent related being satisfied with the sexual assault legislation as it now stands. Five respondents were dissatisfied with the sexual assault legislation, while two were neither satisfied nor dissatisfied with the legislation.

We also asked complainants, based on their experiences with the criminal justice system, whether they would report a sexual assault to the police again. Eight respondents remarked that it was likely that if assaulted again, they would report to the police. Four complainants said that it was unlikely that they would report to police again if they were ever sexually assaulted. One respondent indicated indifference.

5.2.3 Problems or Gaps in Services

During the interviews with complainants, it became obvious that they believed that a number of improvements could be made in how victims are treated. One of the major problems concerns the efforts made to keep victims informed of the progress of their cases and the decisions being make regarding charges laid, plea bargaining, etc. It was also suggested that the entire process from the first report to the police until the final outcomes at court is far too long. It was suggested that the length of the entire process unnecessarily adds to the trauma that the victim endures.

A number of victims indicated that they would have felt much more comfortable if they had been interviewed by female police officers only, rather than males or both males and females. At least two respondents remarked that, in their opinion, all

interviews of victims should be conducted by female officers who have been trained in counselling as well as investigative and interviewing techniques.

Two respondents also suggested that in order to lessen the trauma to victims resulting from their participation in the criminal justice process, victim counsellors should be available at the police station and courthouse. It was felt that these counsellors could explain why certain types of questions were being asked, and help the victim to better understand the trial process.

The respondents also had some suggestions regarding the legislation. One respondent remarked that the definition of sexual assault in section 246.1 was too broad (e.g., coercive genital intercourse was lumped together with unwanted sexual advances or touching). She felt that section 246.1 (Level I) should be further decomposed into three or four levels. She also felt that the way the legislation now stands, there is too much room for judicial discretion regarding the sentencing of offenders ant that this could be addressed by further refinements to the definition of sexual assault.

Another respondent felt quite strongly that the current legislation is primarily concerned with the physical aspects of sexual assault as and does not adequately address their emotional and psychological manifestations. She also felt that the jail terms given to offenders are not reflective of the serious emotional and psychological damage that is inflicted upon their victims.

One respondent was very satisfied with the new sexual assault legislation, remarking that it represented a major step forward in the way that our society deals with the issues surrounding sexual assaults. She was, however, dissatisfied with the efforts made by practitioners within the criminal justice system to ensure that the legislation was implemented. She remarked that, in her opinion, the legislation has not been implemented as intended by the authors of the Bill.

5.3 Perceptions of Key Informants Regarding the Impact of Bill C-127 on the Victim's Experience with the Criminal Justice System

A number of the evidentiary and procedural changes introduced by the amendments were intended to reduce the humiliation and distress experienced by victims during sexual assault trials. The victim is obviously the best source of information regarding this concern, we also asked practitioners for their perceptions of whether the amendment had make the victims' experience with the criminal justice system more or less harrowing.

Two of the judges interviewed agreed that the amendments have reduced the humiliation and trauma experienced by victims in the criminal justice system. One judge neither agreed nor disagreed that the amendments had any effects in this regard.

Of the nine crown attorneys interviewed, eight were able to give an opinion. There was almost unanimous agreement among crown counsels that the experiences of the victim with the criminal justice system had become less harrowing over the past five years. One crown counsel felt that the victim's experience had not changed.

The seven crown attorneys who perceived an improvement in the experience of the victim with the criminal justice system were asked about the importance of various reasons for this improvement. The most important reasons given by respondents was the restriction on the admissibility of evidence regarding the complainants past sexual history introduced by Bill C-127. All considered this to be a major factor. Other reasons cited as important included better preparation of the victim for the trial experience and protection of the victim's identity. These reasons were cited by five of the seven counsels. The removal of the corroboration rule was also considered an important explanatory factor cited by three counsel. In addition, two believed that an increase in support by social agencies helped the victim through the criminal justice process.

The four police interviewed also believed that the victim's experience with the criminal justice system had become less harrowing over the past five years. Again, the major reason given for this improvement was the restrictions regarding questioning of the victim's past sexual history introduced by Bill C-127. Two police thought that this resulted in better treatment of the complainant during cross-examination by defence lawyers. Other reasons cited included the formation of both a victim-witness program and a special police sexual offences squad, greater public awareness and empathy, and improved victim attitudes towards police.

In contrast, three of seven WAVAW workers thought that the victim's experience with the criminal justice system had improved over time. Of these, only one thought the 1983 amendments were and important factor explaining the improvement. The reasons given by the other two respondents for improvements in the victim's experience with the criminal justice system included better support for the victim provided by social agencies and changes in public attitudes and awareness. One worker believed that the subjective experience of the victim had not altered over time and that this was due to uncertainty about "what to expect". One worker suggested that the experience of victims had become more harrowing over time, due primarily to negative police attitudes.

6.0 RECOMMENDATIONS FOR IMPROVEMENTS BY PRACTITIONERS

In the preceding two chapters, we have described the kinds of impacts that the amendments included in Bill C-127 have had on the processing of sexual assault reports and the experience of the victim with the criminal justice system. While few practitioners would argue that the amendments were not positive, problems still remain in a number of areas. In this final chapter, we present the opinions of our key informants as to the nature of outstanding problems and the types of solutions that might help alleviate these concerns. Before presenting these findings, we briefly summarise the major impacts and effects that have been attributed to the 1983 amendments by these practitioners.

6.1 Summary of the Impacts of Bill C-127

The amendments were expected to shift the emphasis from the sexual aspects to the assaultive nature of the offence. A small minority of crown counsel and defence lawyers (five in total) had perceived such a shift, although only two were willing to ascribe this slight shift to the amendments. There was no general agreement that such a shift was a plausible nor a logical outcome from the legislative changes.

Modest changes had been noted in the types of cases being reported. A minority of respondents noted increases in spousal assault reports. Protection had been extended to spouses under Bill C-127, but both practitioners and police occurrence reports suggest that reporting of these types of offences had remained stable.

Although a minority of respondents had noted an increase in reports of child sexual abuse, few were willing to ascribe this increase to the legislative amendments. Increased public awareness of this issue, and greater willingness to report recent and past incidents were considered to be the primary reasons for the increases in these cases.

Some practitioners also agreed that the amendments had resulted in the greater willingness of the criminal justice system to accept cases that would not have been prosecuted in the past because of the sexual reputation of the complainant (e.g., prostitutes) or because of the difficulty of corroborating complaints of sexual touching. This broadening of the definition of "appropriate" cases was expected from the amendments and, in the view of a substantial minority of practitioners, was being achieved to some extent.

Crown counsels tended to agree that the removal of the corroboration requirements, restrictions on the admissibility of evidence regarding past sexual history and abrogation of the recent complaint rules have enhanced their chances of obtaining convictions in sexual assault cases. However, it is worth noting that less than half of

crown counsels interviewed felt that their chances of winning these cases had improved since the amendments. The police and WAVAW Centre workers also displayed positive attitudes towards these evidentiary changes.

The majority of both judges and crown counsels interviewed considered that the earlier statutes were inadequate to deal with the crime of sexual assault. Crown counsels tended to consider that the earlier statutes were not reflective of societal norms and, thus needed to be altered. One judge and three out of five defence lawyers, however, did not concur with this view and believed that the earlier statutes were adequate to deal with the crime and did not need to be changed.

Restrictions on the admissibility of the victim's past sexual history were also considered to have contributed to the improvements noted in the victim's experience with the criminal justice system by both crown and police respondents. Greater sensitivity in the handling of sexual assault victims, however, was also generally perceived as an important factor explaining improvements in how victims experience the criminal justice system.

6.2 Outstanding Problems

Despite these improvements, problems were still perceived with the processing of sexual assault reports and victims. We have grouped the concerns raised by our respondents into four areas: reporting, obtaining convictions, sentencing and treatment of the victim.

Reporting

In our interviews with WAVAW workers, they discussed the reasons why they believed victims were reluctant to report to the police. The reasons included fear of retaliation by the assailant, intimidation by the types of issues that would be raised at a trial or by the length of the trial process, fear that the police would be unsympathetic, the feeling that reporting would not result in the type of resolution they wanted and lack of family support. According to the WAVAW workers, factors such as these constrain reporting to the police and cause some victims to be reluctant to have their charges pursued by the police and crown.

A minority of respondents did believe, however, that there has been an increase in the reporting of incidents of child sexual abuse. This perceived increase in reporting of these incidents is encouraging in light of research that suggests a high incidence of child sexual abuse in the general population. Although problems remain with the

processing and reporting of these cases, this issue will not be pursued further in this report as it is the subject of a separate sub-study.[1]

Convictions

Despite improvements in obtaining convictions noted by the majority of judges and a minority of police and WAVAW workers, a number of respondents from the crown, police and WAVAW considered that convictions were still too difficult to obtain. According to the judge who held this view, juries still adhere to old fashioned notions about the appropriate behaviour of women and "they still have a tough time with the issues if they perceive that the victim has put herself in a compromising situation." When asked what the major difficulties were in obtaining convictions for sexual assault, three out of four police officers responded that the credibility of the complainant over and against the accused was a critical factor in obtaining a conviction. Because there is often a lack of corroborating evidence in these cases, juries must weigh the relative credibility of the complainant versus that of the dependent. One police officer added that credibility was especially important if the victim was a prostitute.

Compliance with the amendments was not generally considered a problem by either judges or crown counsel and defence lawyers. The majority agreed that the amendments had been implemented as intended. It is interesting to note that all judges and the majority of the crown counsel (eight of nine) interviewed believed that the amendments did not violate the defendant's rights to fair trial. Defence lawyers disagreed on this point and were of the view that the amendments did violate defendants' rights.

Sentencing

Only two of the crown counsel interviewed thought that the sentences being handed out were inappropriately low. The remaining crown counsel thought that the current sentences were neither too high nor too low. The majority of defence lawyers (three out of five) thought that sentences were inappropriately long. One defence lawyer questioned the usefulness of imprisonment as opposed to psychiatric treatment for the defendant. Two defence lawyers, however, believed that, in certain instances (e.g., cases of "date rape") the sentences being handed out were too long.

Treatment of the Victim

The majority of outstanding problems identified by practitioners concerned how victims were treated by the criminal justice system and related agencies.

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[1] See: Ekos Research, "Report on the Study of the Treatment of Sexual Abuse Cases in Vancouver," 1988.

The doctors we interviewed praised WAVAW workers for the types of emotional support they provided to victims throughout the process and for the range of services offered. However, all three doctors interviewed felt that the scarcity of paid staff at WAVAW made it difficult to provide optimum service to victims. Two of the four police officers on the sexual offences squad suggested that some WAVAW workers had unfavourable attitudes towards police and that this was due to negative attitudes toward "men" generally. One officer stated that WAVAW workers should encourage victims of sexual assault to report to the police more often than they presently do.

WAVAW workers (three out of seven) criticized police for not being uniformly sensitive to sexual assault complainants. One worker stressed that this lack of sensitivity was demonstrated especially to lower class victims, prostitutes and native Indians. Another WAVAW worker reported that police were unreceptive to the support that WAVAW workers could provide for victims during the police interview. One judge and one of the doctors interviewed also thought that the lack of consistent in sensitivity towards victims was a problem. To quote the judge who held this view, "the treatment that victims receive from police should not depend on individual sensitivity." It must be stressed that many respondents were not unhappy with the attitudes and behaviour of the police. One doctor interviewed reported that the Vancouver city police were "very good."

Three WAVAW workers suggested that crown counsel could improve their relationships with sexual assault victims. Problems noted generally concerned poor preparation of victims for the trial experience and the failure to keep the victim informed about the progress of the case.

Two crown counsel and three WAVAW workers noted that the attitudes held by judges and the public at large were still a major problem. According to these respondents, victims were still seen as being at least partially to blame for sexual assaults and so were effectively on trial themselves. Three crown counsel expressed frustration at the length of the trial process and the various stages (i.e., preliminary hearing and trial) that the victim had to go through.

Although the majority of outstanding problems identified concerned treatment of the victims, all three judges expressed concern for the treatment of the offender. In the view of the judges interviewed, the public's increased demand for harsh punishment was not tempered with a concern for the fact that offenders do not receive the treatment that they need in prison.

6.3 Suggested Solutions by Practitioners from Criminal Justice and Related Agencies

Given this reading of outstanding problems, what kinds of legislative and non-legislative changes were recommended by practitioners to improve the processing of cases involving victims of sexual assault? We stress that these are not the

recommendations put forth by this report. Rather, these are the views expressed by key informants regarding improvements to the current situation.

Legislative Solutions

When crown counsel were asked if further changes to the legislation were required, five agreed that changes were needed with four dissenting. Of those crown counsel supporting further changes, three suggested that the preliminary hearing should be eliminated as it was unnecessarily traumatic for victims to have to go through both the preliminary hearing and the trial. One crown counsel believed that the "burden of proof" should be shifted, while another crown counsel suggested that evidence presented by child witnesses should not have to be given under oath. One crown prosecutor felt that many "effective changes" (e.g., elimination of cross-examination) would result in unfairness to the accused.

Non-Legislative Solutions

While the majority of defence and crown respondents believed that the amendments had been implemented, two WAVAW workers felt that stronger enforcement of the rules restricting the admissibility of evidence regarding past sexual history were necessary. Four of the five defence lawyers interviewed reported that they had succeeded in introducing evidence regarding the complainant's moral character and/or past sexual history since the amendments.

Fear that prior sexual activity will be an issue at trial is also considered by WAVAW workers to constrain reporting. In order to objectively determine the extent to which abrogation of the recent complaint rules, restrictions on past sexual history and elimination of the corroboration requirement have been implemented, we would need to observe all sexual assault trials. Our key informant interviews have suggested that corroborating evidence is still an important factor in trial outcomes. Also, although recent complaint rules have been abrogated, crown counsel almost unanimously held the view that lack of recent complaint could be damaging to the crown's case. According to these crown counsels, defence lawyers are still able to suggest that the complaint was not disclosed when it was natural to do so and that this diminishes the complainant's credibility.

Most of the recommended solutions given by our study respondents concerned improvements to the way in which victims were treated.

These suggestions included:

- o more consistent sensitivity shown to victims of sexual assault by the police. At present, some practitioners feel that there is no guarantee that all victims will be treated in a sympathetic manner (suggested by one judge, one doctor, three WAVAW workers and two crown counsel).

- better co-operation between WAVAW and the police. A formal protocol between police and the WAVAW could provide useful information and training for new police recruits.

- more specialization of crown prosecutors and police officers to deal with special needs of sexual assault victims (suggested by one doctor, two WAVAW workers and two crown counsel).

- more female judges, crown prosecutors and police (suggested by one crown counsel, one WAVAW worker and one doctor).

- increased use of victim impact statements in sentencing decisions in order to help ensure that the sentence fits the crime and the victim feels vindicated (suggested by one crown and one WAVAW worker).

- greater expenditure of public funds to provide support systems for victims whether these take the form of temporary shelters, emergency counselling or long-term counselling (suggested by four crown counsels and two WAVAW workers).

- increased in funding of the WAVAW Centre to enable them to offer the kind of support that is warranted (suggested by the three doctors interviewed and all WAVAW workers).

- in-camera hearings excluding the public for all sexual trials (suggested by three police officers).

- elimination of preliminary hearings to reduce trauma to victims and to hasten the trial process (suggested by three crown prosecutors).[2]

- continued efforts to alter the attitudes of all practitioners involved in the criminal justice system and the public at large. Since it appears that victims are still considered as at least partially to blame for sexual assault, education is required to alter these attitudes, for example through media coverage and workshops (suggested by respondents from all agencies).

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[2] It is interesting that the Crown Prosecutors mentioned this as a recent article in the Ontario *Lawyer's Weekly* remarked that if a sexual assault case proceeds beyond the preliminary hearing, the odds of conviction increase dramatically.

Finally, the judges interviewed put forward solutions regarding the experience of the sexual assault offender in the criminal justice system.

These solutions included:

- o community-based treatment programs for sexual assault offenders; and
- o education of the public regarding the treatment needs of the offender.

7.0 SUMMARY AND CONCLUSIONS

In the second chapter, we outlined the four major research goals that were to be addressed by this study. These included:

- o describing the current response of the criminal justice system and related agencies to reports of sexual assault;
- o delineating the direction and extent of any changes in practices and outcomes since the implementation of Bill C-127 with particular emphasis on determining the extent to which the legislation is responsible for any changes;
- o describing the victims' felt experience with the criminal justice system and related agencies; and,
- o documenting improvements suggested by practitioners to better achieve the intentions underlying the 1983 legal reforms.

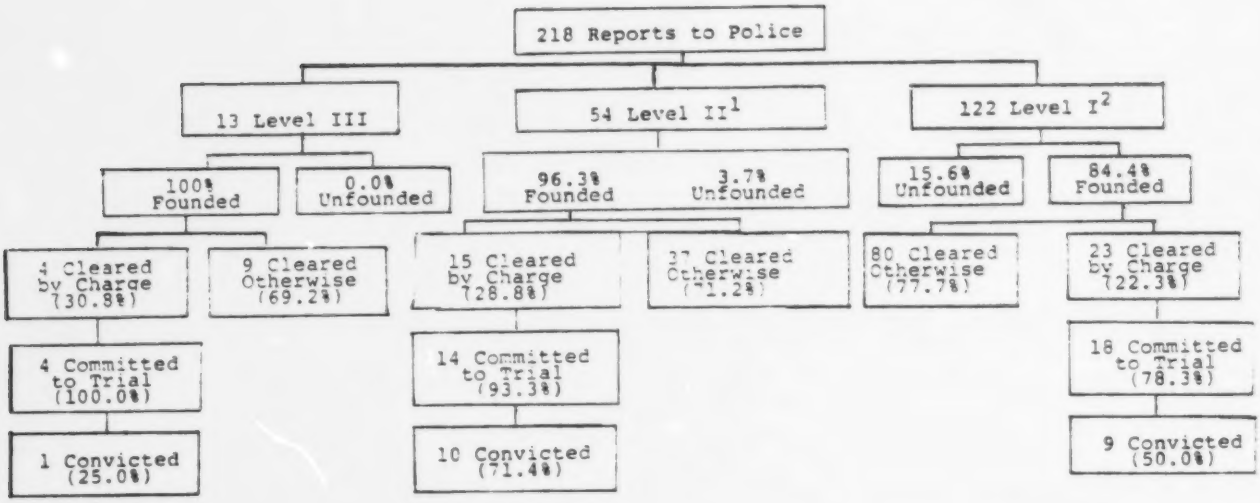
In the last four chapters, we have presented our study findings with respect to these four research objectives. These findings included both objective and subjective data collected from a variety of perspectives. It is easy to lose sight of the essential findings in the profusion of detail produced by each line of evidence and so, in this last chapter, we summarise the findings according to the four primary study goals cited above.

7.1 Current Response to Reports of Sexual Assault

In this section, we summarise our findings regarding how cases of sexual assault are received and acted upon by the criminal justice system and related agencies in Vancouver. We begin by providing an overview of the flow of reports through the criminal justice system.

Table 91 displays an overview of the flow of sexual assault reports in our sample for which the police completed an occurrence form in 1984/85. Of the 218 reports in our sample, the outcomes were known for 189 cases. Of these, 89 per cent were founded and 11 per cent were classified as unfounded. This varied significantly between the three levels of sexual assault. The highest founding rate was for Level III reports (100 per cent), followed by Level II reports (96.5 per cent), while the lowest founding rate was for Level I reports (84.5 per cent). We are struck by the very substantial rate at which reports of sexual assault in Vancouver are considered as founded.

Table 91 Overview of the Flow of Sexual Assault Reports



Source: Unweighted

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[1] The outcomes of 7 Level II reports are unknown

[2] The outcomes of 22 Level I reports are unknown

We believe the differences in founding rates, when broken down by level, stem from two factors: (i) the sheer volume of Level I cases, and (ii) the quality of evidence available. Incidents that would be classified as Levels II or III are more likely to include some level of violence such as the use of threats or physical force, physical injuries to the victim and the use of a weapon, than are incidents classified as Level I. Each of these factors are significantly associated with the founding decision.

Considering only those reports labelled as founded, only 25 per cent (42 cases) were cleared by charges laid by the crown. There were minor (but not significant) differences in clearance rates by level of sexual assault. Approximately 31 per cent of the Level III (4 cases), 29 per cent of the Level II (15 cases) and 23 per cent of the Level I (23 cases) founded reports were cleared by charge by the crown. Many founded cases are not proceeded with because an assailant cannot be identified or located. Furthermore, there is a high attrition rate of founded cases in which the victim is unwilling to proceed (approximately 40 per cent of victims in founded reports are unwilling to proceed). Primary among the reasons why sexual assault victims may be reluctant to proceed are intimidation by the sheer length of the process, and fear of retaliation by the assailant.

Not all reports that were cleared by charge were committed to trial. Approximately 84 per cent of the cases in which the crown laid charges actually proceeded to trial. By level, we found that 100 per cent of Level III cases, 93 per cent of Level II cases and 78 per cent of Level I cases went to trial.

The overall conviction rate for sexual assault cases that went to trial was 56 per cent. Broken down by level, we found that the highest rate of conviction was for Level II cases (71 per cent) followed by Level I cases (50 per cent), while the lowest conviction rate was for Level III cases (25 per cent). The low overall conviction rate for Level III cases was said to result from the more demanding nature of trials where the penalties following conviction are known to be more severe. One crown counsel suggested that in Level III cases, the trial takes on a completely different tone due this fact.

According to respondents from the Vancouver police, the decision as to whether or not a complaint is founded is based on a number of factors. These factors include the relationship between the complainant and the accused, the credibility of the complainant, and the existence of corroboration for either the complainant or the accused. In Chapter Three of this report, we tested a number of variables that we believed were related to the founding and clearance rates for cases of sexual assault reported to the Vancouver police during 1984/85. These variables included the availability of corroborating evidence, the character and conduct of the complainant, the relationship between complainant and assailant and characteristics of the offender.

Contrary to our expectations and the perceptions of the respondents from the Vancouver police force, we found that the availability of corroborating evidence

(forensic test results, other material evidence or a corroborating witness) was not significantly associated with the founding decision.

Thus, while the nature of the sexual contact implies different opportunities for corroborative evidence, we categorized reports as involving sexual touching or penetration, we did not find any statistically significant associations between the nature of the sexual contact and the founding decision.

We did find, however, an interesting association between the founding decision and the person or agency to whom the victim first disclosed the assault (refer back to Table 38). Reports that indicated that the victim had first disclosed the assault to a social agency (i.e., social services, hospital, rape crisis centre) were more likely to be considered as unfounded than assaults disclosed first to the police, family members or friends.

We were also surprised to find that there was only a very weak association ($p<.10$) between the founding decision and the relationship of the assailant to the victim (refer back to Table 36). While the association did not attain conventional levels of statistical significance, the findings were, nevertheless, substantively very interesting. Reports of sexual assault where the complainant knew the assailant prior to the assault were twice as likely to be considered as unfounded as reports where the assailant was a stranger.

There were no significant associations between the founding rate and such variables as the gender, age or marital status of the victim or speed of reporting to the police (when categorized very crudely as less than or more than 24 hours). We did find, however, that the perceived moral character and conduct of the complainant appeared to influence the founding decision.

For example, 59 per cent of the reports that contained the suggestion that the victim was lying were considered as unfounded compared with approximately three per cent of reports that did not contain the suggestion. Similarly, one half of the reports containing a suggestion that the victim was promiscuous or of bad moral character were considered as unfounded compared with 11 per cent of reports without such a suggestion (refer back to Table 35).

There was a significant relationship between the founding decision and whether or not the victim was vulnerable. Where the occurrence report indicated that the complainant was vulnerable due to physical or mental disabilities, the report was almost three times more likely to be considered as unfounded.

There were also weak but significant associations between three other factors related to perceptions of the victim's character or reputation. The problem with all three of these factors is that the majority of reports did not contain information about these three variables, thus we do not know if there are systematic biases in the cases

that contain the relevant information. For this reason, we caution the reader to exercise caution in interpreting the following findings.

If the complainant had a prior criminal or juvenile record, then the report was more likely to be considered as unfounded. Similarly, if the complainant was intoxicated at the time of the offence, then the report was twice as likely to be considered as unfounded. More than one fifth of the reports where the victim was intoxicated were considered as unfounded compared with ten per cent of reports where the victim was not intoxicated at the time of the offence. We also note that approximately 47 per cent of the reports that indicated that the complainant was unemployed were considered as unfounded, while none of the reports indicating that the complainant was employed were classified in this way (refer back to Table 35).

We were surprised to find that there were no statistically significant relationships between the founding decision and offender characteristics such as age, gender or marital status. Neither was there an association between the offender's prior record and the founding decision.

There were significant associations between a number of offence characteristics and the founding decision (refer back to Table 37). For example, all of the incidents in which the offender used a weapon were considered as founded. In comparison, 16 per cent of reports where the offender did not use a weapon were considered as unfounded. If the assailant threatened the victim with physical harm, then the report was much less likely to be considered as unfounded than if the assailant did not threaten the victim. Similarly, if physical force was used on the victim, then the report was less likely to be considered as unfounded than if no physical force was used on the victim. In the same vein, if the victim was physically injured during the assault, then the report was almost three times less likely to be considered as unfounded than if the victim did not sustain any apparent physical injuries.

Finally, we note that if the occurrence report indicated that the victim did not resist the assailant, the report was almost four times more likely to be considered as unfounded than if the report indicated that the victim physically or verbally resisted the assailant. This finding suggests that the victim is perceived as at least partly to blame for the assault if she did not resist the assailant.

We also explored a number of factors expected to be associated with the clearance rate (i.e., reports cleared by charge) for founded sexual assault reports. There were no significant associations between the charging decision and offender characteristics such as gender, age, marital status or prior record.

Although there were statistical associations between two complainant characteristics and the charging decision, both of these relationships were very mild (refer back to Table 39). The first concerned the complainant's employment status. The report was more likely to be cleared by charge if the complainant was either

unemployed or a prostitute than if the complainant was either a student or employed full or part-time. We do note that there are a large number of missing cases which may differ systematically from those cases that included this information.

We also noted than none of the founded cases where there was a suggestion that the victim was lying were cleared by charge. In contrast, 27 per cent of the founded reports that did not contain this suggestion were cleared by charge.

While the relationship between assailant and complainant did not appear to influence the founding decision, it is significantly associated with the charging decision One fifth of the reports involving assaults by strangers and 22 per cent of spousal assaults were cleared by charge, while one third of assaults against prostitutes (by their customers) and 39 per cent of assaults by friends or associates were cleared by charge. The high clearance rate for cases involving prostitutes was explained by one crown counsel as stemming from the crown's ability to argue in court that the fact that the prostitute came forward to report the incident in the first place suggests that the assault was genuine (and serious) given the criminal sanctions against the practice of prostitution in Canada.

We also note that founded reports in which physical force was used on the victim were more than three times as likely to be cleared by charge as assaults where physical force was not used. Similarly, founded reports that were corroborated by forensic or material evidence or witnesses were more than four times as likely to be cleared by charge as reports without corroboration.

It is well known that not all incidents of sexual assault in Vancouver or any where else are reported to the police. As noted in Chapter One, the academic literature suggests that the police are only called in a minority of cases. In fact, the Canadian Urban Victimization Survey suggested that as few as 38 per cent of sexual assaults in 1981 came to their attention. While we have no data on the extent of underreporting in Vancouver, we have presented limited data regarding the incidents reported to WAVAW in 1984/85.

We can begin by noting that only about one third of the women who called WAVAW indicated that they had made a police report about the sexual assault. An almost equal proportion of women who called WAVAW indicated that the police were not contacted, while about on fifth remarked that the police had been involved but that they (the victims) had not contacted them themselves.

We can also compare and contrast the differences in complainant and incident characteristics between the two groups. The typical caller to WAVAW was likely to be younger than the callers to the police. Approximately 29 per cent of callers to WAVAW were under 18 years of age, while 54 per cent were between 18 and 30 years and 18 per cent were over 30. In contrast, 68 per cent of the complainants to the police were between 18 and 30 years of age, while 32 per cent were over 30. These differences

are primarily due to our exclusion of police reports involving victims under 18 years of age from our sample.

Similarly, callers to WAVAW were much more likely to be single and never-married than were the complainants to the police. Three quarters of the callers to WAVAW were single, 14 per cent were married (or in common law relationships) and 11 per cent were separated, widowed or divorced. In contrast, less than half of the complainants to the police were single, while 43 per cent were married/common law and ten per cent were separated, divorced or widowed. Again, these differences are at least partially related to the fact that our sample of reports to the police only includes complainants 18 years of age or older, thus explaining the greater proportion that are married/common law.

The most striking difference between the reports made to the police and those made to WAVAW involves the relationship between assailant and victim. A greater proportion of the incidents reported to WAVAW involved assaults by persons previously known to the victim. Over one half (57 per cent) of the callers to WAVAW recounted an assault by someone they knew. In contrast, only 31 per cent of the reports made to the police involved assaults by persons previously known to the victim. This difference may suggest that there is a large degree of underreporting to the police in cases where the victim knows the assailant.

A much greater proportion of the reports to the police than those made to WAVAW indicated that the victim and/or assailant were intoxicated at the time of the assault. Approximately one third of the reports made to the police indicated that the victim was intoxicated at the time of the assault, while 29 per cent indicated that the assailant was intoxicated. In contrast, 10 per cent of the WAVAW reports indicated that the victim was intoxicated, this state was said to describe 14 per cent of assailants.

There were no other major differences between the two groups. The profiles of cases presented in Chapter Three and summarized here indicate that there are some important differences in the populations reporting to the two different agencies. The degree of overlap is, however, difficult to determine without tracking cases across agencies, which is beyond the mandate of this study.

7.2 Changes in Practices and Outcomes Since Bill C-127

7.2.1 Changes in the Reporting Population

The amendments were expected to provide legal protection to a wider range of Canadians from a wider range of nonconsensual sexual activities. Thus, protection was extended to wives, the legislation was made gender-neutral (sexual assault could be

committed by a man or woman on a man or woman), and the crown no longer had to prove penetration of the vagina by the penis.

We relied upon two lines of evidence to identify the extent to which changes had occurred in the type of complainants coming forward or the type of sexual activities involved in these incidents: a comparison of police occurrence reports from before and after the amendments and the opinions of our key informants. In order to assess the causal impact of the amendments on any observed changes, we relied on logic, statistical manipulation of the quantitative data to control for possible competing explanations and expert opinion. The research design is weak in its ability to eliminate competing explanations and thus this "triangulation" of different lines of evidence is necessary.

The first difference that we noted between the pre- and post-amendment periods was an overall decrease of 23 per cent (from 528 reports in 1981 and 1982 to 408 reports in 1984 and 1985) in the reports to the police by adult complainants. It is implausible to assume that the number of sexual assaults has decreased by almost one quarter, thus we must assume that there has been a significant decline in reporting.

In order to gain at least a preliminary notion of why there was such a sharp decline in the reporting rates over time, we contrasted the reports along a number of dimensions. There were virtually no differences over time in the age or gender of complainants. This was somewhat surprising as the amendments explicitly extended protection to individuals of either sex from nonconsensual sexual activities by persons of the same sex.

While this lack of significant change in the gender of complainants does not explain the decline in the number of reports since the amendments, it shows that there was not the increase in reports that might have been expected given the explicit recognition of homosexual assaults embedded in the legislation. Of course, some legal observers have seen the "degenderization" of the sexual assault legislation as a purely nominal change that would not necessarily be reflected in any changes in the dimensions of reporting.[1] Only one crown counsel and two police officers perceived an increase in cases involving a complainant and an assailant of the same sex.

There were weak but significant differences over time in the marital status of complainants. The proportion of single, never married complainants declined from 58 to 51 per cent of all complainants over time. In contrast, the proportion of married or common law complainants increased from 34 to 40 per cent of all complainants over time.

There were also significant differences in the relationship of the assailant to the complainant over time. In fact, we believe that these differences help to explain the overall decrease in the number of reports since the amendments. The majority of sexual

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[1] For example, see: Boyle, Sexual Assault, p. 41.

assaults prior to the amendments were perpetrated by strangers to the complainant. These comprised 81 per cent of the Time One cases reported to the police. Subsequent to the amendments, 67 per cent of the assaults were perpetrated by strangers. A widespread public perception that these types of cases are more difficult to resolve may account for the significant decline in the number of reports of stranger assault over time.

Conversely, the proportion of assaults by current or former spouses or common law partners increased from two per cent of the preamendment reports to seven per cent of the post-amendment reports, however, assaults by other relatives decreased from about two per cent of the Time One reports to less than one per cent of the Time Two reports. Three crown counsel believed that there had been an increase in cases where the complainant and assailant were married or common law partners. Two of five defence lawyers and two of four police officers had also noted increases in these cases. Assaults by friends or associates increased from ten per cent of the preamendment reports to approximately 17 per cent of the post-amendment reports.

Judges, lawyers and police were asked if they noticed a change since the 1983 amendments in the types of complaints being prosecuted. Only one of the judges had noted a change. In his view, there had been an increase in "less serious" cases being prosecuted as people were more willing to come forward to report incidents and the crown office was more willing to lay charges. The perceived greater willingness to come forward and report incidents of sexual assault was attributed by the judge to greater public awareness. Three defence lawyers believed that there had been a general increase in the number of cases of sexual assault being prosecuted. For one defence counsel, this reflected an actual increase in the incidence of these crimes. The perceptions of these respondents contradict our findings regarding the decrease in the number of reports over time.

In our interviews with WAVAW workers, a number of the reasons why victims were reluctant to report to the police surfaced. The reasons included fear of retaliation by the assailant, intimidation by the types of issues that may be raised at a trial or by the length of the trial process, fear that the police would be unsympathetic, the feeling that reporting would not result in the type of resolution they wanted, and lack of family support. According to the WAVAW workers, these types of factors seriously constrained reporting to the police and caused some victims to be reluctant to have charges pursued by the crown.

7.2.2 Changes in Reporting Outcomes

There was virtually no difference in the founding rate over time. Roughly 93 per cent of preamendment reports and approximately 89 per cent of post-amendment reports were considered as founded. One half of the police officers interviewed during the course of the research remarked that the proportion of sexual assault reports considered to be founded had not altered since 1983. They estimated quite accurately

that only about five per cent of reports receive this classification. The extent to which the amendments could be expected to have an impact on the founding rate is, however, questionable, especially given that the legislation did not address the issue of the exercise of police discretion to label reports as founded or unfounded. We do note, however, that the founding rate for both pre- and post-amendment reports was very high.

Considering only founded reports, we noted significant differences over time. The percentage of founded reports cleared by charge increased significantly from 11 per cent of preamendment founded reports to 25 per cent of post-amendment founded reports. This substantiates the view held by our key informants that more cases have been prosecuted since the amendments. Conversely, the proportion of founded reports that were not cleared by charge fell significantly from 89 per cent of preamendment founded reports to 75 per cent of those considered founded in the post-amendment period.

It is difficult to determine the extent to which the changes in the charging rate can be attributed to the amendments. While our data do not allow us to conclude that the amendments have improved the charging rate, we did note one major difference between the preamendment and the post-amendment cases in which charges were laid. This difference concerned the levels of violence. Subsequent to the 1983 legislative amendments, reports that were cleared by charge were more likely to involve the use of a weapon or physical force, the incidence of accompanying offences or physical injuries to the victim.

There were no significant differences in whether or not charges were laid based on factors such as the sociodemographic characteristics of the complainant or the offender, the relationship of the offender to the victim or the nature of sexual contact. We also found no significant differences based on whether or not the report was corroborated by forensic or material evidence or witnesses.

7.2.3 Changes in Court Outcomes

Three crown counsel perceived that there had been no change in the rate of conviction since the new law was implemented. Five of the nine crown counsel also believed that the crown's chances of winning sexual assault cases were no different than before the amendments, while the remaining four crown counsels held the opposite view. Four of the five defence lawyers also believed that sexual assault cases had become more difficult to defend, while one lawyer did not perceive any differences in the outcomes of court cases since the amendments were enacted.

When asked to explain why the crown's position had improved since the legislation, two of the four crown prosecutors who perceived improvements suggested that it was due to greater public awareness of, and changing attitudes regarding, sexual

assault. The other two crown counsel who perceived an improved position since 1983 linked the improvement to the provisions of the legislation regarding the abrogation of recent complaint rule and the inadmissibility of evidence of past sexual history with other than the defendant. Defence lawyers also believed that the new rules concerning evidence of past sexual history and recent complaint as well as changes in attitudes on the part of the public and the judiciary were the primary causal factors explaining the improved position of the crown.

Judges and police were also asked about their perceptions concerning changes in the rates of conviction. Two judges reported that the new legislation had made convictions easier to obtain. One judge perceived that the legislative amendments had not affected conviction rates remarking that the "standards of proof" had not altered. Half of the police officers interviewed perceived no changes in the rates of conviction since the new law came into effect.

Although, the perceptions expressed by the respondents were interesting, our quantitative data files revealed no significant difference in the overall conviction rate since the amendments. Approximately 53 per cent of the preamendment cases and 56 per cent of the post-amendment cases committed to trial ended in conviction.

We also asked the crown prosecutors and defence lawyers what factors they saw as critical to obtaining convictions or acquittals. Eight of the nine crown counsel believed that despite the abrogation of the rules regarding recent complaint, the behaviour of the complainant immediately after the assault could be introduced and could influence perceptions of the complainant's credibility. While more than half of the crown prosecutors felt that abrogating these rules was one of the most significant differences between prosecuting cases under the old rape laws and the new sexual assault provisions, it was noted that this kind of evidence could still be introduced under certain circumstances. For example, two of the five defence lawyers believed that lack of recent complaint was still damaging to the crown's case. The majority of crown counsel also believed that corroboration was still an important factor influencing court outcomes despite the relaxation of the corroboration requirements. For example, it was their view that evidence of physical injury to the complainant was an important aid to the prosecution. The majority of defence lawyers also thought that lack of corroboration could be very damaging to the crown's case. Six of the crown counsel believed that the prior sexual history and character of the complainant were potentially important factors influencing final court outcomes.

Four of the five defence lawyers stated that since 1983 they had successfully introduced evidence regarding the complainant's past sexual history and/or moral character. However, all of the judges interviewed indicated that they had not presided over any cases since the legislative amendments where defence lawyers had attempted to do this. These judges did, however, remark that they could think of circumstances under which this type of evidence should be allowed. Cited as examples were: (i) where a previous relationship existed between the complainant and accused and previous

allegations had been made against the accused; and (ii) where a woman had consented to have sex with several men in a particular situation and then refused the accused.

Six crown prosecutors also believed that a the general moral character and background of the complainant as perceived by the judge or jury was influential in determining final court outcomes. As a result, they felt that convictions were particularly difficult to obtain if the complainant was a prostitute. These same crown attorneys also felt that the demeanour and credibility of the complainant were important factors influencing final court outcomes. In fact, two crown counsels felt that perceptions regarding the demeanour and credibility of the complainant as a witness were more important than her perceived moral character or background.

A minority of respondents also remarked that while proof of penetration is no longer required for conviction, it corroborates the complaint, thus making the case much stronger. Similarly, the majority of crown prosecutors remarked that a prior relationship between the complainant and accused was very influential because lack of consent was more difficult to establish in the jury's mind.

During the analysis of the quantitative file data, we found some interesting changes over time in the importance of a number of factors related to final court outcomes. For example, in cases where physical force was used on the victim, the rate of conviction was higher subsequent to the amendments. Approximately 43 per cent of the preamendment court cases where physical force was used on the victim ended in conviction compared with 53 per cent of the post-amendment cases that went to court.

It was interesting, however, that the incidence of injuries to the complainant was more important prior to the amendments than it was subsequently. All of the preamendment court cases in which the complainant had sustained physical injuries during the assault ended in conviction compared with 53 per cent of the post-amendment cases that went to court.

The influence of the use of drugs and/or alcohol by the assailant on final court outcomes has grown over time. One third of preamendment cases in which the offender was intoxicated ended in conviction. In contrast, 56 per cent of the post-amendment court cases where the assailant was under the influence of drugs or alcohol at the time of the assault ended in conviction.

The importance of the incidence of accompanying offences on the final court outcomes has lessened over time. Approximately 59 per cent of the preamendment court cases in which there were accompanying offences ended in conviction. In contrast, only one third of the post-amendment court cases that featured accompanying offences had this result.

7.3 The Victim's Experience

In Chapter Five of this report we considered a number of factors concerning the treatment of the victim of sexual assault. In particular, we explored the institutional response to victims of sexual assault, the services sought by victims and the attitudes of sexual assault victims towards the criminal justice system and related agencies in Vancouver. The basic design for the research, namely the lack of comprehensive preamendment information regarding the victim's experience, makes it virtually impossible to speak to the issue of the impacts of the legislation on the victim's felt experience.

Our data have been limited primarily to the attitudes of a small number of post-amendment victims of sexual assault. These respondents do not represent the population of sexual assault victims both because of their small number and the fact that they were not randomly chosen. Archival data from the police and crown files did not shed any light on this issue either as the emotional state of the victim was not usually recorded. We are therefore reliant primarily upon the opinions of practitioners from the criminal justice system and WAVAW to broaden our understanding of the sexual assault victim's felt experience with the criminal justice process. First, however, we should briefly recall the experience and comments of our respondents from the post-amendment period.

Eleven of the sixteen victims sought medical attention for assaults that took place subsequent to the amendments. Six of these respondents requested that medical evidence be collected by a physician. Six of the eleven respondents commented that they were satisfied with the way they were treated by the medical staff, while two were dissatisfied and three were neither satisfied nor dissatisfied. None of the respondents complained of excessive delays while waiting for medical treatment. The respondents who were dissatisfied with the way they were treated noted either what they believed were judgments on the part of the medical personnel or cold, uncaring attitudes.

Ten of the sixteen respondents used the services of a sexual assault centre. The majority of the respondents were seeking advice on what to do, what they could expect if they reported the incident and emotional support or counselling. A minority of the respondents were seeking accompaniment to the hospital, police or court. Five of the ten respondents were extremely satisfied with the services and/or help they received from the centres. One respondent was mildly satisfied, two respondents were neutral, while two were dissatisfied with the services or help received. A male respondent was upset that the centre he contacted would not offer him any help or advice because of his gender. Another respondent was upset because of a lack of available follow-up counselling by the centre. A third respondent suggested that sexual assault centres should offer some sort of immediate emergency shelter for victims of sexual assault.

Fourteen of the sixteen respondents reported the sexual assaults to the police. Seven of the respondents were interviewed by male police officers, one was interviewed

by a female officer and six were interviewed by both male and female police officers. Approximately one half of the respondents were positive about the officers they came in contact with, considering them to be sympathetic and courteous. Four were dissatisfied.

Eleven of the fourteen cases reported to the police were considered as founded. In seven cases, the crown laid charges under section 246.1 against an assailant. Four respondents indicated that they were dissatisfied with the efforts made by the crown to keep them informed about the progress of their cases. Two of the cases ended with verdicts of guilty as charged, three ended with verdicts of guilty to a lesser charge (common assault) and two ended with acquittals.

Based on their experiences with the criminal justice system, eight respondents remarked that it was likely that if they were ever assaulted again that they would report the incident to the police. It is disturbing, however, that four complainants indicated that it was unlikely that they would report a sexual assault to the police again.

With respect to the victim's experience with the criminal justice system, practitioners were not unanimous in considering that the amendments had made the experience less harrowing. Seven crown counsel perceived an improvement in the experience of the victim with the criminal justice system. The most important factor explaining the improvements according to the seven respondents was the restriction on the admissibility of evidence regarding the complainant's past sexual history introduced by Bill C-127. Other reasons cited as important included better preparation of the victim for the trial experience, protection of the victim's identity, removal of the corroboration requirements, and increased support for victims involved in the criminal justice process by social agencies.

The four police officers interviewed believed that the victim's experience with the criminal justice system had become less traumatic over the past five years. Again, the major reason given for this improvement was the restrictions regarding acceptable lines of questioning concerning the victim's past sexual history. Two officers perceived that this had resulted in better treatment of the complainant during cross-examination by defence lawyers. Other reasons cited as contributing to improvements in the victim's experience with the criminal justice system included the formation of both a victim-witness program and a special police sexual assault squad, greater public awareness of sexual assault and empathy towards the victims of assault, and improved victim attitudes towards police.

Two of the judges interviewed also believed that the amendments had reduced the humiliation and trauma experienced by victims as a result of their involvement in the criminal justice system. In particular, they pointed to the restrictions on the types of acceptable lines of questioning by the defence, the ban on publication of the victim's identity and the relaxation of corroboration requirements.

In contrast, only three of the seven WAVAW workers thought that the victim's experience with the criminal justice system had improved over time. Of these, only one thought the 1983 amendments had contributed to the improvements. The other two respondents from WAVAW suggested that the victim's experience with the criminal justice system had improved due to better support for the victim by social agencies and changes in public awareness and attitudes. One respondent from WAVAW believed that the subjective experience of the victim had not altered over time and that this was due to the uncertainty about "what to expect". Another worker suggested that the victim's felt experience had actually worsened over time becoming more harrowing due primarily to negative police attitudes.

The majority of respondents from the crown, defence and judiciary indicated that they believed the amendments had been implemented as intended. We do note, however, that the timing of the disclosure of the assault by the complainant was raised as an issue in three of the trials that we observed during the field work. In all three of these trials, the delay, along with other factors, was used by the defence to support the argument for consent or fabrication. In two of the three cases, the jury acquitted the accused.

In one of the seven trials observed, the defence repeatedly questioned the complainant regarding her proclivity to frequent bars, pick up men and take them home to have sex, more particularly, to have oral sex. In this trial, the complainant's prior sexual activities and reputation were raised by the defence, but were not preceded by a disclosure of intent on the part of the defence counsel. Neither was the evidence brought forward in adherence to the restricted circumstances outlined in the 1983 amendments.

Finally, we note that in one trial, perhaps due to a perceived lack of credibility on the part of the complainant, there seemed to be a reluctance to convict the accused of sexual assault in the absence of specific corroborating evidence. That is, even though evidence of vaginal bruising was presented to support the complainant's case, there was no sperm found in the forensic samples taken from the complainant at the hospital. This fact was emphasized by the judge in his instructions to the jury.

These three factors suggest that there is clearly room for improvements in the treatment of the victim in court. We realise that these cases cannot be taken as representative of all sexual assault trials, however, according to the 1983 amendments these issues should not have been raised and the fact that they were indicates that further improvements are needed.

In summary, the majority of practitioners from all agencies that we contacted remarked that they had seen some improvements over time and that the amendments appeared to be a contributing factor to the improvements. On the basis of all lines of evidence (e.g., archival, interviews and court monitoring), we conclude that the amendments have had a positive impact on the treatment of the victim, although some

victims appear to be subjected to unnecessary trauma as a result of their participation in the criminal justice system. Although further improvements in the experience of victims and the processing of sexual assault complaints are necessary, it appears that these improvements will come from extra-legal solutions (e.g., nonlegislative).

7.4 Outstanding Problems and Suggested Solutions

While our study indicates that the legislative amendments have been essentially progressive, their potential for altering the processing of sexual assault reports has not been fully realized. For example, there has been virtually no change in the proportion of cases that end in conviction (approximately 56 to 57 per cent of cases reaching final adjudication in both the pre- and post-amendment periods ended in convictions). Law reform requires more than changes to the Criminal Code. Specifically, changes in attitudes, practices and available resources are as integral to successful law reform as legislatively mandated changes. Moreover, problems are still perceived with the treatment accorded to sexual assault victims.

In this section, we summarise the concerns raised by key informants and victims and suggest to what extent these concerns are reflected in the quantitative study findings. We have organized these concerns into three main groupings: (i) public awareness and attitudes; (ii) roles and responsibilities; and (iii) minimising the trauma to the victim.

7.4.1 Public Attitudes and Awareness

Our findings regarding changes in the reporting population suggest that the general public may not be fully aware of the intent of the legislation. Of course, in order to test this notion, a survey of public awareness and knowledge of the law would need to be undertaken. The fact that there were virtually no changes in the pre- and post-amendment reporting populations suggests that greater efforts may be needed in order to inform the public about the changes brought about by the 1983 amendments. Specifically, any future public education campaigns could focus on explaining that the new legislation has extended protection both to persons assaulted by members of the same sex, and spouses whether living together or apart at the time of the incident.

Based upon the small number of responses we received from victims, there appears to be a need for expanding the range of legal educational services for victims, especially regarding the length of time that it will take for their case to be processed through the criminal justice system and the types of issues that may be raised at each step in the processing of the case.

7.4.2 Roles and Responsibilities

The second major issue concerns the roles and responsibilities fulfilled by various practitioners in the criminal justice system and related agencies. In particular, there may be a requirement for a clearer division (and definition) of the roles and responsibilities of each agency, and an improvement in the amount of inter-agency communication and cooperation. At present, there appears to be a great deal of overlap in the types of activities performed by each agency, but there does not appear to be a clear division of roles and responsibilities. The degree to which the various agencies cooperate and communicate with each other is not clear either. There may well be room for improvement in such areas as preparing the victim for court and keeping victims informed of the progress of their cases through the criminal justice system.

We were also struck by an apparent need for greater cooperation and communication between the police, crown and sexual assault centres. Each agency has special abilities and perspectives that could enhance the roles and effectiveness of the other agencies. For examples, closer cooperation could foster greater understanding and sensitivity on the part of criminal justice practitioners regarding the psychology of trauma and crisis. Similarly, closer contact between the various agencies could help to ensure that the victim clearly understands the criminal justice system process and the progress of their case through the system.

Closer communication and cooperation need not mean co-optation. Counsellors from sexual assault centres could hold seminars for members of the police and crown to enhance understanding and sensitivity to the victim's felt experience and emotional needs. The police and crown may also consider a formal arrangement with one or more of the sexual assault centres to have a counsellor available to help victims through the interview and aftermath of making a report.

Similarly, closer communication between the police and sexual assault centres could enhance counsellors' understanding of the evidentiary issues and legal requirements that are central to due process. We are not suggesting that sexual assault counsellors should make evidentiary and legal requirements their primary concern. Rather, with some training regarding these requirements, counsellors, and by extension victims, may be better able to make difficult decisions from a better informed position regarding the consequences of different courses of action (especially in cases where legal considerations conflict with counselling concerns). In cases where there are no potential conflicts between counselling concerns and legal considerations, there is a strong justification for counsellors gaining an understanding of such issues as how the manner in which the victim's statement is revealed can have an impact on the outcomes of a trial.

One manner by which closer communication and cooperation between the various agencies could be fostered would be to formalize relationships through a sexual assault

protocol. Participating members should, at a minimum, include the crown, police, local hospitals and sexual assault centres.

7.4.3 Minimising Victim Trauma

Key informants made a number of suggestions regarding possible actions to lessen the trauma for victims. The first solution concerned the use of specialized sexual assault teams in the police and crown office consisting primarily of female practitioners. The use of specialized teams was seen as an essential step in the recognition of the special needs of victims of sexual assault.

Respondents from all agencies agreed that more support is needed for victims of sexual assault. The problem, according to respondents from all agencies, is that there are inadequate resources available to expand current services and support systems for victims of sexual assault. Until such time as current services can be improved and expanded, the "secondary victimisation" of sexual assault victims as a result of their participation in the criminal justice system will probably continue to be a problem.

Beyond these concerns, respondents from all agencies suggested that there is a need for continued efforts to alter the attitudes of all practitioners involved in the criminal justice system and of the public at large. It was suggested that since it appears that victims are still considered as at least partially to blame for sexual assaults, education in the form of media campaigns and workshops is needed to alter these widely held attitudes.

7.5 Future Directions

Our findings suggest at least two areas that need to be examined in greater detail in the future. The first area concerns levels of support for front-line workers in the area of sexual assault. While we have urged greater specialisation of front-line workers, we recognise that "burnout" is a very real problem in all of the agencies involved in our study. For example, we note that the Vancouver police have just raised the individual detective's limit for working on the sexual offences squad from two to three years, yet there has not been a concomitant increase in the availability of emotional support or counselling for these detectives.

Adequate levels of support are required for those who choose to specialise in the area of sexual assault in order to deal with the stress that leads to burnout. This support must be built into the system (i.e., institutionalized) rather than being provided on an ad hoc or voluntary basis, as some front-line workers may be reluctant to seek counselling or other emotional support. We strongly urge the development and implementation of support programs in all relevant agencies (e.g., crown, police, sexual assault centres, hospitals) as institutionalized support programs may help to ensure the

high levels of quality that come from specialization as well as address the stress that results from the emotional intensity of the work.

The second area that needs to be addressed concerns the attrition rate of sexual assault cases as they proceed through the criminal justice system. In particular, there are a number of questions that need to be explored through further research. For example, we note that approximately 40 per cent of victims in founded reports of sexual assault drop out between the initial report and final adjudication. There are a number of reasons for this high attrition rate including an unwillingness to proceed for fear of retaliation, and intimidation by the length of the process. There is an urgent need for comparative research in order to determine whether or not this substantial attrition rate is anomalous compared with other violent and nonviolent offences.

Finally, we note that future research could also examine the link between victim assistance and support programs and the number of sexual assault cases proceeding to court. If a link does exist, then increased support for victim assistance programs may help to ensure that sexual assault victims do not feel victimized by the criminal justice system.

APPENDIX A

Bibliography

APPENDIX B

Research Instruments

APPENDIX B.1

Police/Crown Files Data Capture Form

APPENDIX B.2

WAVAW Files Data Capture Form

APPENDIX B.3

Court Monitoring Schedule

APPENDIX B.4

Victim Interview Schedule

APPENDIX B.5

Key Informant Interview Schedules

APPENDIX C

Individual Case Study Responses from Victims of Sexual Assault

APPENDIX D

Research Issues and Detailed Data Requirements

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